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SENATE RULES COMMITTEE

STATE OF CALIFORNIA

= Legislature

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SENATE RULES COMMITTEE

STATE OF CALIFORNIA

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, JULY 15, 1987

2:55 P.M.

Reported by:

Evelyn Mizak
Shorthand Reporter

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APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR JIM ELLIS

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR HENRY MELLO

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

CYRIL FRITZ, Member
Teachers' Retirement Board

RICHARD MILANOVICH, Member
Native American Heritage Commission

DAVID T. ROMERO, Member
State Board of Education

JAMES S. STOCKDALE, Member
Unemployment Insurance Appeals Board

ELAINE DEMPSEY

L. "CUFFIE" JOSLIN

WILLIAM PINK

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PROCEEDINGS

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CHAIRMAN ROBERTI: Governor's Appointees appearing today, Cyril Fritz, Member of the State Teachers Retirement Board.

Mr. Fritz, we'll ask you what we ask all the Governor's Appointees; that is, why you feel you're qualified to assume this position.

MR. FRITZ: Mr. Chairman and Members of the Committee, I assume that you have some background on me, so I would hope that by giving you a brief resume, brief highlights of my activities and my business life over the past number of years, and I will not try to go date by date because as you can tell from my gray hair, that might take quite a while. But I'll try to give you the highlights of some of the things I've done.

My career was sort of varied. I've had probably two careers, virtually. I spent 12 years in the corporate world working for both Safeway Stores and Montgomery Wards. For Safeway Stores, I was office manager and buyer for containers for their private brand; items, for instance, their coffee brands and their mayonnaise, and things like that. So I bought glass containers and metal containers and that type of thing.

For Montgomery Wards, I was a buyer both in Oakland and in Chicago, and I bought three different lines of merchandise during that period. I guess we bought for -- my responsibility covered 500 retail stores and nine mail order houses.

I then spent 17 years running my own retail variety stores in the San Francisco Bay Area. And after a number of years in the retail business, I guess everything has a price, the price I paid for being my own business and being my own person was something I preferred to do, but sooner or later --

SENATOR PETRIS: It gave you more gray hair.

MR. FRITZ: That's right. The price of money suddenly became very, very dear. So I decided at that point -- my children were either -- the money was set aside for their education or they had finished their education, and I decided that I was going to exercise I guess what I call the school board delusion about, quote, "making a contribution", unquote. And I went to see a friend of mine who had given me my first business loan who had, I guess, moved up the ladder very rapidly and was chairman of the board of Wells Fargo Bank at that time, and told him what I wanted to do. I told him that I would like to use my expertise in the small business field, perhaps in being able to help other people in succeeding at least in the fashion that I did, to a certain degree anyway.

So, he said your timing was perfect because this was 1970, I still had one store at the time, and the seven major banks in the state of California had set up a nonprofit corporation to foster the development of minority entrepreneurship. And he gave me an introduction through the then-president of the company, which was called Opportunity Through Ownership.

I went to work there full-time and ran my remaining store part-time. It was kind of an intriguing experience. After two years of some very difficult times because we were really forging new ground in an area that hadn't been tried before, I guess the bankers got a little nervous about loss rates that were occurring. They were somewhere in the neighborhood of 47 percent at the time, and they felt that there was a need for a change in management. They reviewed the portfolio and found that there were some 15 loans on the books that they felt were worthwhile loans, and the rest of them they felt they had to write off completely. They told me that 12 of them were ones that I had initiated and started, and they asked me if I would be able -- would like to take over as president of this organization, which I did, and served as president from 1973 to 1977.

Mr. Petris mentioned something about gray hair. I think at that point I got more gray hairs than I ever had because we were not only making marginal-type loans, but we were also providing management, technical assistance, and at some points I thought I was a marriage counselor and a few other things along the way.

But it was an extremely gratifying experience because we did have some successes. I brought the loan rates -- loss rates down from 47 percent to 12 percent. And while that is not extremely good in the banking business, in the type of thing that we were doing I thought it was extremely -- quite an improvement over 47 percent anyway.

I did that for a number of years, as I said, and developed, I guess, a number of good contacts in the banking business. As a result of that, I was -- after there was no need for this organization any more because of some things that I had instituted where we actually worked together with the Small Business Administration in making these loans, and the Small Business Administration progressed to the point where we thought this whole operation could be handled through the federal government situation, so we closed the operation down.

I then got an invitation from the Small Business Administration to go to work for them as their bank relations officer because they had a requirement, as you probably know as to how they work, they do -- they guarantee loans, and they needed more bank participation. So it became my job to go around the banks and see if we could get more bank participation. I did that for, oh, six-plus years. I only worked for them part-time. I worked four days a week for them at the time.

I theoretically retired in March of '85, and I do have a part-time consulting job right now with an organization called The Money Store Investment Corporation, who are the largest SBA lenders in the country at this point.

In addition to my business life, I also served on the California Job Development Board from 1973 to 1977. I served on the board of Opportunity Capital Corporation, which was a venture capital organization. I served on another organization, Arcata Management, which was a management and technical assistance organization.

And I also had some strong interest in school affairs during my spare time, and at one point I headed up a statewide committee for, I guess, obtaining additional funds for low wealth schools districts. I live in Castro Valley, which is an unincorporated area with no industry, and we felt that low wealth school districts perhaps were not getting the amount of money that --

CHAIRMAN ROBERTI: Senator Petris.

SENATOR PETRIS: I think Mr. Fritz is very highly qualified. I think it's an excellent appointment that the Governor made.

Besides that, he lives in my county, in an area I used to represent but not for several years.

MR. FRITZ: We did meet one day, Mr. Petris.

SENATOR PETRIS: I'd like to ask you some questions about the nature of your present work as a Member of this Board.

MR. FRITZ: Which has been very brief.

SENATOR PETRIS: Yes, which has been only since January.

MR. FRITZ: That's right.

SENATOR PETRIS: We're constantly worried in the Legislature about the unfunded portion of the Teachers Retirement Fund. We've had legislation over a period of many years.

I haven't kept up with it. What's the size of the gap now of the --

MR. FRITZ: I believe it's over 40-year cycles as I understand it. The current actuarial valuation of the deficit would be $10.9 billion.

SENATOR PETRIS: Is that being reduced by the investments at an appreciable rate?

MR. FRITZ: Senator, I would hope that that would be the case because we've certainly had a great deal of appreciation in the size of the fund. I would like to take credit for the fact that since January the fund valuation increased when I came on board from 19 billion to 23 billion, but I don't think I had very much to do with what occurred.

SENATOR PETRIS: What are the nature of the investments? Are they in stocks?

MR. FRITZ: Well, at this point we're better than 50 percent in equities, which is stocks, yes, sir, about 35 percent in fixed income.

SENATOR PETRIS: If the market keeps going up, I guess we can close the gap altogether eventually?

MR. FRITZ: Well, I suppose, but as we both know, the market is a very unpredictable thing. I don't think we can count totally upon the investment income to totally reduce the unfunded liability which has been going on, what, since 1913 from what I've read.

SENATOR PETRIS: What's your perception of the administrative efficiency?

I get complaints constantly from teachers. They write to the Board, and they want to know where they stand. They're approaching retirement in three, four, or five years, and they don't get any information for months and months and months.

MR. FRITZ: You probably have more experience, sir, with that than I do. But I do know that the staff and the Board is addressing that one very, very diligently at this point. We are now

SENATOR PETRIS: What's the problem? Do they need more help, or they need more machines?

MR. FRITZ: Well, they need both. They need both more help and more machines, and I think we are doing something. We're tying into the Teale Data Center. I think we'll be on line with most of our operations within -- over the next year, which should improve the serve to our constituency, which we're very concerned about.

We also are putting people out in the field. Part of our problem has been getting the information from the school districts themselves on the individuals. We are now putting some people out in the field, covering all the districts that we possibly can to provide on-site advice.

SENATOR PETRIS: I have in mind Social Security. You can send a little note to the office in Baltimore, or it used to be Baltimore. I think it might be Chico now, or someplace in some remote part of California.

I was in New York last week, as a matter of fact, and someone showed my a notice from Social Security responding to an inquiry about that person's current status. And the answer came from California, the person residing in New York City. I don't understand that.

MR. FRITZ: I've had personal experience with that last week.

SENATOR PETRIS: Is that right?

MR. FRITZ: Yes, sir.

SENATOR PETRIS: Where's the main office now? Is it Marysville for the whole nation?

MR. FRITZ: The people that write to me concerning my account, I had a situation where I earned more money than was allowed under Social Security last year, so I had to make some refunds. The information came from Flushing, New York.

SENATOR PETRIS: That makes sense.

Who makes the current investment decisions? Is it a vote of the Board, or do you hire professionals? Or is it a combination?

MR. FRITZ: A combination of both, sir. The Board's responsibility is one of policy in setting asset allocations, like we just talked about. And we have a very competent, in my opinion, chief investment officer who in turn has been able, through his knowledge of the industry, to hire for the Board various types of investment advisors.

SENATOR PETRIS: Are they on contract?

MR. FRITZ: They're on contract.

SENATOR PETRIS: Thank you.

Can I move the nomination?

CHAIRMAN ROBERTI: Senator Petris --

SENATOR PETRIS: May I move recommendation of confirmation?

CHAIRMAN ROBERTI: Right. Senator Petris moves Mr. Fritz's nomination do pass and to the Floor.

Is there any opposition?

Seeing none, Secretary will call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is four to nothing; confirmation is recommended to the Floor.

Congratulations.

MR. FRITZ: Thank you, gentlemen.

SENATOR CRAVEN: Mr. Fritz, just a passing question.

When you graduated from college, was your college at that time called the College of the City of New York, or CCNY?

MR. FRITZ: Right, CCNY; that's correct.

SENATOR CRAVEN: But wasn't it always City College of New York as opposed to College of the City?

This is a very weighty question.

(Laughter.)

MR. FRITZ: I think technically it's the College of the City of New York.

SENATOR CRAVEN: Well, of course, that in more recent days has become very prevalent. But I was in school at the same time a hundred years -- a hundred miles away.

MR. FRITZ: It was a hundred years, sir.

SENATOR CRAVEN: Yes, and looking at this, you must have started school when you were quite young.

MR. FRITZ: I guess I did actually.

SENATOR CRAVEN: Well, I figure looking at this dossier, you had to be 16 when you entered college.

MR. FRITZ: That's correct, sir.

SENATOR CRAVEN: Well, congratulations. You've done very well.

MR. FRITZ: Thank you.

CHAIRMAN ROBERTI: Thank you very much.

Next is Mr. Richard Milanovich, Member of the Native American Heritage Commission.

MR. MILANOVICH: Thank you, Senator Roberti.

CHAIRMAN ROBERTI: Mr. Milanovich, we'll ask you why you feel you're qualified to assume this position?

MR. MILANOVICH: I can't explain myself the way the previous gentleman did because, being concerned about Native American issues, culture and heritage is something that cannot be learned in school.

It me, it came from my -- from my surroundings, from my environment growing up as an Indian person. My grandmother, who was a Cupeno Indian from Warner Springs, was one of those people that was forcibly removed back in 1907-1906 by the then-Governor

of California to allow the White settlers into the area so they could build their little Hot Springs.

CHAIRMAN ROBERTI: Where was this?

MR. MILANOVICH: Warner Hot Springs.

SENATOR CRAVEN: That's down in our area. We're very familiar with Warner.

MR. MILANOVICH: My grandmother was nine years old when she was removed from there, forcibly removed.

She taught me about that. She told me how it hurt to be moved from her homeland, how important it was to provide and to protect yourself, your heritage. If you don't have your heritage, you aren't -- you are no one. When you do have that heritage behind you, and you defend it and you fight for it, then you are able to stand up and you're able to walk proud wherever you may go.

Since that time I have been on the Maliki Museum, it's the Indian museum in Banning, California, for the last six years as an associate member. I have served on the Palm Springs Historical Preservation Board for the last two years. That's a city organization. I have been a member of our tribal council, the Agua Caliente Tribal Council for the last eight years, serving as the chairman for the last three and a half years.

I have been -- I was appointed by the Governor in October to serve on the Native American Heritage Commission. I actively strived for that position because I felt that I could offer some assistance, some guidance to the Commission.

I was -- I saw the Commission in action twice: one time back in April of '86 and then again in July of '86. They had a Commission meeting in Palm Springs in April of '86, and then in Eureka in '86, in July of '86.

I could see that the Commission was having trouble working within themselves. There seemed to be a lack of leadership, lack of direction as to what the Commission wished to do. They knew what they wanted to do, but they were having problems coming to an understanding of whether something could be done.

I feel that with my ability that I could assist the Commission in that respect, besides my concern and my caring about who I am and my people.

Come to find out, Senator Roberti, that, if I may continue, there have been some objections made; both, from what I understand, written and orally.

From my understanding, one of the biggest objections to me being a Member of the Commission is the fact that I do not agree with the rest of the Commissioners. I feel, though, that as an American citizen, I have that right to disagree, and it behooves me to disagree when I don't feel something is going right.

I have -- I don't feel comfortable when I disagree with the Commission, when I don't vote along with the Commission. One of the Commissioners told me, he said, "Richard, I don't always agree either, but I go along with them just to keep peace."

I told him, I said, "I can't do that. If I disagree, I will speak up and say so."

I am trying to help the Commission, not destroy it. What was happening with the Commission was destroying itself. And somehow or another, I got to be the one, the focal point or the target, the cause as the Commission is going downhill.

That is not true. The Commission was having problems, possibly still may have some problems, but I see the Commission as turning. They've made a great turnaround.

One of the biggest arguments that I've had with the Commission Members are matters of personnel, personnel matters. I did not agree with the way they handled the personnel issues and I spoke up. I did not agree. I said, "I think you're wrong. I think it's personality conflicts you're going after. You are blaming someone other than the one that should be blamed," and for the most part, that was the Commission itself. They were not accepting the blame for them not -- the lack of action that was not taking place.

On other issues, all the other issues that were involved, I did not agree all the time, but I did not disagree so strongly.

I also heard that I walked out on votes when votes were being taken so I would not have to vote. I walked out on a vote one time in -- well, it was actually here in Sacramento, a Commission meeting. That was on the advice of the Attorney General's Deputy, the Deputy Attorney General that was present. He said during executive session, "If you proceed with this

discussion, you are opening yourself up to a liable suit individually and as a Commission."

I took that advice to heart and I walked out because I did not want to a part of that illegal hearing, according to the Deputy Attorney General.

It's also been said that I would not attend meetings. I've attend all scheduled meetings. There has been two special meetings that were called, or actually more than two special meetings that were called. The first one that was called soon after the first meeting in January, the Commission meeting in January, I told the Secretary at the time I could not attend; I had prior business to attend to. That was fine.

The next meeting that was called, another special meeting that was called, was called to discuss what was purportedly budget -- no, not budget -- legislation and --

SENATOR CRAVEN: Litigation?

MR. MILANOVICH: Litigation, right.

That was fine. I told the Secretary that I would attend. I said is that all that's on the Commission agenda? She told me yes, it was. I said fine. The meeting was in two weeks.

It was a week later that I found out that they had put personnel matters, executive session, on the agenda. I had also found out that the litigation and the legislation was -- was more or less clear sailing for both. There was not discussion necessary on either litigation or the legislation. Also I felt that what they were trying to do, the Commission, once again it was a personnel matter, and I did not agree with it, so I declined to attend that meeting.

That was the only meeting I missed. That was the only time I walked out of a meeting, is when -- on the advice of the Deputy Attorney General.

It's also been said that I wrote and signed my own letter of nomination to become a Member of the Native American Heritage Commission.

Senator Roberti, this letter that was not a letter; it was a resolution from the Tribal Council, the Agua Caliente Tribal Council, which I as a matter of business singed as the Chairman of the Tribal Council. The Secretary signed the certification. There was four members present; three members voted "aye"; I abstained from voting. I did not write the letter, the resolution.

I'm not sure what else there is. I guess I could open myself up to questions.

CHAIRMAN ROBERTI: Thank you, Mr. Milanovich.

Any questions? Senator Craven, go ahead.

SENATOR CRAVEN: No, go ahead.

CHAIRMAN ROBERTI: I guess the main concern is, there's been some concern that, as I've been reading some of the letters and some of the comments that have come in, that the whole broad base of the Native American community are concerned that you are not responsive to them, and the concern is you're responsive to a narrow group, namely centering on your own tribal council.

I'd like you to just speak to that.

MR. MILANOVICH: Okay. Back in July of '86, before I even was considered -- or, I was considering trying to become a

Member of the Commission. I spoke with Mr. Beck, at that time the executive secretary of the Commission. He said, "Richard, there is a burial which has -- uncovered burial which has taken place in Barstow, California. It's in Kathryn Saubel's region, that's Riverside County. It's been going on for two years now." One and a half years at that time; the burial had been uncovered and nothing had been done. The Coroner's office kept calling the Commission: Can you do something; can you do something?

Gary, Mr. Beck, asked me to look into it. I proceeded to write letters to the land owners, the attorney, and after six months, I went back to the Barstow burial site. I took the remains long with our tribal historian, a couple of archeologists from the BLM, disinterred those remains, and then put them in our cemetery for a short period of time, and then put them in the 29 Palms Indian Reservation Cemetery. After two years it was finally done.

Yesterday I was in Orange County at Irvine, the mediation session between the Gabrielino, the Juaneno and the Trammel Crow Development Company. Once again, there's some remains that have been on the Coroner's shelf now for -- they were uncovered four or five years ago, 12 remains. They had been fighting back and forth. Yesterday when I met, I acted as a mediator. They agreed, both sides agreed to meet again in four weeks to determine where those remains are to be reburied.

At Malibu State Park just two weeks ago, I went as a Commissioner because of some remains that had been uncovered down there. We reached an agreement there.

I was in Eureka with the Hoopa Tribe as a Commissioner about some remains -- no, no remains but historical site, sacred site. We reached agreement there.

So, for someone to say that I have very narrow and limited interests, namely my own tribe, that's a falsehood.

CHAIRMAN ROBERTI: Senator Craven.

SENATOR CRAVEN: Well, I listen with interest to the gentleman's comment, and I have had the good fortune of representing many tribes, at one time 17 in my district. And I'm, although certainly no expert on Indian affairs, I have had enough familiarity to know that if you get a bunch of Indians together, they're going to disagree with one another. I don't think there is any question.

I think Mr. Milanovich would probably agree, because he's experienced that.

What he states is the way he feels. And I don't think he should be criticized just because he's not a go-alonger.

There is a great necessity to have somebody serve on a commission such as this that knows the Indian mystic, if you will, or they psyche of Indians because they are a breed, obviously, unto themselves, and they think and act and react in their own fashion. One must be conversant with that.

Despite the fact that he has a Slavic name, he is no more an iconoclast than a good friend of mine who is an Indian whose name is Dennis McGee; he's an Irish Indian and you're a Slavic one, but I think that he is very well-qualified.

I would like to move his nomination, Mr. Chairman.

CHAIRMAN ROBERTI: Senator Craven moves.

We'll take opposition. Is there opposition in the audience? Yes, please come forward.

MS. DEMPSEY: My name is Elaine Dempsey. I'm a California Wintun Usaw.

CHAIRMAN ROBERTI: Pardon? I didn't catch that.

MS. DEMPSEY: Wintun from Redding and Usaw, a band of Pomos from the Mendocino coast.

SENATOR CRAVEN: I don't think any of us can hear you.

CHAIRMAN ROBERTI: She explained the tribe and location from Mendocino and Redding.

SENATOR CRAVEN: Yes, that I understood.

MS. DEMPSEY: I've never been known to have a dainty voice.

SENATOR CRAVEN: You're fine as long as you're close to the microphone.

MS. DEMPSEY: I'll start again.

I'm Elaine Dempsey. I currently reside in Solano County. I am a member of the California Wintun and Usaw Tribes.

I understood this session to be one of only discussing Mr. Milanovich's qualifications, and I'll go ahead with that.

Since 1979, I have been interested and active with the Native American Heritage Commission. I have been participative with the protection of Indian burial sites in Santa Clara County since 1975. My mother served as a Commissioner, I believe, from 1982 to 1984. My great-aunt was one of the first to be given special dispensation by the U.S. Forestry Service. She practiced

Wintun medicine and Wintun religion at the foot of Mount Shasta, which she still does.

I preface my statements today by saying I bear no malice and no hostile intent by opposing the confirmation of Richard Milanovich. I am opposed to his method of induction to the Commission for the following three reasons. These are my opinions.

Firstly, Richard did not apply to the Native American Heritage Commission out of his own concern to ensure California Indians the safeguarding of their native religious rights and heritage legacy as past Commissioners have. I believe Mr. Milanovich was sought out, as I was, by the past executive secretary to serve as a Commissioner and to be a part of a select group serving at the behest of the former executive secretary.

To give you an idea of the casualness and inverse selection process that was involved here, I was asked in July of 1986 in the office of the former executive secretary to seriously consider whether I also wanted to serve as the Commission Chairperson once I was seated. Though the executive secretary does not make those selections, he acted as if this could all be easily arranged if that's what I wanted.

I needn't tell you this is an abhorrent attitude to come into the service of the Native American Heritage Commission. That is, that one seeks -- that is that the job seeks one for manipulative purposes and not that one seeks the job out of commitment.

I might add that because I would not endorse the former executive secretary's policies of operation and staffing, I quickly fell into his disfavor and of course there was no quick maneuver to get me seated.

Secondly, though Richard Milanovich's name was submitted as a replacement by resigning Commissioner Kathryn Saubel, this act alone would neither qualify nor automatically guarantee his immediate status as a Commissioner. To endorse or cite such a stipulation would only open up a claim by myself of discriminatory treatment, for my name has also been submitted in exactly the same circumstance on February of this year by an outgoing Commissioner, and of course I've not been made a Commissioner to date.

I understand that Mr. Milanovich probably had the proper endorsement to accompany his recommendation, but then so did I.

My comment is, any such a recommendation is not a criterion for Commission selection, and it never has been. Kathryn Saubel's Area 8 vacancy should have been properly publicized to the Indian population in that area.

The precedent for Commissioner application is a standard one. The vacancy is publicized in the state by the Native American Heritage staff with the procedures that are outlined, resumes, and appropriate support material as applicable is sent to the attention of the Commission Chair. After the deadline date, the resumes are reviewed by all Commissioners, and the recommendations are sent forward to the Governor for final selection. Notification of this acceptance is sent out by the Governor's Office and Senate confirmation is sought.

This procedure is simple, and it's worked since it was first instituted. It has ensured a democratic process of selection in dealing with some 50-plus tribes and bands who are eligible to apply for these positions in California. It ensured that the one selected would be interested, would be qualified, would experienced, and who could offer good faith support from his tribe and demonstrate a commitment from his Indian community.

Further, this procedure enabled the Commission to stay legal in member makeup. That is, according to the Public Resources Code, and I quote the enabling authority in 1976:

> "The Commission consists of nine California Native Americans, five of whom are elders and spiritual leaders, appointed by the Governor and with the advice and consent of the Senate."

Unquote.

My third point is Richard Milanovich is neither an elder nor a spiritual leader. Area 8 was vacated by an Indian elder and needs to be replaced with same.

The current Commission composition would also call for the other three existing vacancies, Areas 2, 4, and 5, to be filled with Indian elders and spiritual leaders to be in legal compliance. The Commission would then consist of five elders and spiritual leaders and four others.

CHAIRMAN ROBERTI: How is an elder or spiritual leader designated?

MS. DEMPSEY: Very difficult, but I would not imagine somebody in his forties to be an Indian elder and probably not a spiritual leader.

SENATOR CRAVEN: May I ask, I got the impression based on what I interpreted your comments, that you were in effect and in fact sort of proffered an opportunity to serve on the Commission; is that correct? Did you say that they had sought you ought and said, you know, would you like to come to the Commission and so forth?

MS. DEMPSEY: Yes.

SENATOR CRAVEN: All right. Now, would you fall into either of the categories? Certainly you're not an elder.

MS. DEMPSEY: That's true, no. And I am excusing myself. I do have a map if you don't have one before you that shows the vacant positions.

CHAIRMAN ROBERTI: Yes, well we'll stipulate that. That's no problem.

I just wanted to find out, you would not have qualified under either of the two criteria.

MS. DEMPSEY: No, I do not. I admit that.

SENATOR CRAVEN: Very well. That's fine.

CHAIRMAN ROBERTI: Please continue.

MS. DEMPSEY: I believe all Indians would agree at this juncture the Native American Heritage Commission is sadly lacking in benefit of Indian elders and spiritual leader appointments.

My final comment is this: Just because a person is of Indian descent does not qualify him for automatic placement on

this Commission. Indian people are discriminating. We want the best person to fill these jobs. It's an important representation to us.

We have waited as long as two years for the Governor to make some movement toward filling the Commission vacancies. That we should have some input into the selection process is only a logical and relevant request given the nature of the agency; however, a vacancy is preferable to the selection of a Commissioner who is unfamiliar with the Commission's function, who is unfamiliar with the State's culture, and who is unfeeling to the hard-earned gains of past Commissioners.

Obviously we wish to go forward and not backward. I ask that you give notice to the fact that there is not a stated expiration term to a Commission appointment, and a wrongful decision here can make an already tough job of the Heritage Commission just that much tougher.

The fight of Indians should not be against one another, but a united front against those who are trying to destroy our heritage.

We here today are trying to build a workable Commission dedicated -- of dedicated people to meet this cause.

CHAIRMAN ROBERTI: Thank you, Ms. Dempsey.

Mr. Milanovich, would you like to have an observation or rebuttal?

MR. MILANOVICH: Just to her first point about the -- Mr. Beck.

I did not -- Mr. Beck did not come to me and ask me to serve on the Commission. I went to Mr. Beck and told him that I was interested in serving on the Commission because I have concerns about the Commission and the way the Commission was going at that time.

Thank you.

MS. DEMPSEY: I would just add one comment, then, and Mr. Beck is not here to defend himself.

I was in the office early last year, and I did happen to see a list of names of people that Mr. Beck wished to serve on the Commission and list of names of those people he wished to have removed.

CHAIRMAN ROBERTI: Thank you.

Is there other opposition? Please come forward.

MS. JOSLIN: My name is Mrs. Joslin. I don't probably need the microphone.

CHAIRMAN ROBERTI: It doesn't sound as if you do.

MS. JOSLIN: I appreciate the opportunity to come before you. I have a brief statement, Mr. Chairman, Members of the Board.

There is one on your panel that knows me for many, many years. When this Commission was only a seed, Dr. Jack Forbes, of UCD, very well-known in the Indian community worldwide and an author, called me -- at that time I was residing in Redding -- asked me to meet him on the Capitol steps three days later if it was possible.

We had that meeting. We spent probably three hours together that afternoon, and he told me about this seed, the seed that later became the Native American Heritage Commission.

Mr. Forbes did not have the time with his very busy and worldwide schedule to work and develop this into law, and I was asked if I would take that seed over. It was a big chore, I know.

I'm a great-grandmother and I've been involved with my Indian people all of my life quite literally. My mother is a full-blood Wyot. I was born in Mendocino County, a little town that almost doesn't exist anymore, four miles south of Fort Bragg. My father was a Caucasian and one I know very little of. As an abandoned child at five months, I was raised at my Indian grandmother's knee and my great-grandmother's. My learning stems from that background. And I don't like being stereotyped because I happen to have been born with blue eyes.

I just wanted you to know that because many of you've seen my face around here for better than twenty years, and probably about fourteen of those years ago was when I stood on the steps with Dr. Jack Forbes in relation to what is now the Native American Heritage Commission.

I've been involved with just about everything that concerns our tribal people from one end of this state to the other, and I've never restricted it to my own personal Wyot tribe. I do not look at our California Indian people in that light.

With time, I've grown to much broader and to take in problems of all of our people from all walks of life, from all financial statuses of our people, from the richest to the poorest, and I don't know many that are rich, certainly not in California. And you can count me among those.

So, this is an unhappy event for me to be coming before you today in the matter of Richard Milanovich. And it doesn't give me any pleasure because I am in opposition to the confirmation of this appointment.

I was at the very first meeting of which Richard sat on the Board of Commissioners. I had spoke with Richard at that time that he mentioned awhile ago when he walked out of a meeting that he was dissatisfied with what was going on, said he was advised by the legal mouth that was there, and so he chose to leave. That's his privilege also.

And I believe that Richard, if he will put on his cap here for just a moment, will recall that during that brief meeting when I spoke to him in the lobby, that I said -- I introduced myself and I said, "Richard, go slow. This is but your first meeting. You've got a lot to learn. Sometimes when you go into these kind of things for the very first time, it's best to set through a meeting or two or three, if necessary, until you get the feel of what's been happening and what's coming down, and get your feet on the ground before speaking too quickly, because you can get off on a wrong foot," or words to that effect.

Do you recall that, Richard, if I might ask?

MR. MILANOVICH: Somewhat, yes.

MS. JOSLIN: I was in my own way, I would like to say, giving him every benefit of the doubt. It was my first sight of Richard, and I hadn't been to a Heritage Commission meeting in quite some time due to ill health, very serious health that's held me back quite a bit in the last few years, recent years.

But I wanted Richard, hopefully, and he certainly looked intelligent to me, to slow down and give himself an opportunity to grasp what he was getting himself into, no matter what he'd heard, no matter what he might have read, or who his friends or enemies were. You don't know until you're there. And this I know because I've served on an awful of boards in just about any capacity that you could name, and currently do serve on a commission at State that has nothing to do with the Native Americans.

So, I followed this event of Richard Milanovich from that day forward. I was asked by many of our people that were very upset about Richard, or Mr. Milanovich -- Richard if I might -- to talk with our community people to get the feel of him.

There was a large crowd at that very first meeting that Richard appeared, and I could see that their feathers were very much on end through that two-day meeting. It was at times quite ugly.

It hurt me and it angered me. It hurt me because there is probably only one other person in this room right now that knows how hard I worked to bring about the Native American Heritage Commission. At the time I was on crutches; I was

traveling by bus. There was never any financial backing other than my husband's very modest salary to see me to do this, and I did all but sleep in the halls here. This went on for well over two years.

But it came to be, and we did have a Native American Heritage Commission.

All right, this led us of the Indian community, that had never ever had this -- there's never been another Indian community or Commission in the State of California, through no fault of our own. And I don't think it speaks too well for the State of California.

However, it brought forth the fact that now the Indian people from the various communities and walks of life must get together and take the responsibility for this Commission that was now signed into law.

This also was not easy. We don't have a great many Indian people that are educated, that are good at public speaking. There are many of them very reluctant to speak at all. And you might evidence that here today. There were many, many people that would have like to have been here today. When you ask them if they will testify, they're reluctant; they don't feel confident. In fact, they're very much frightened of boards like your own. And so was I not too many years ago. I just had to get a little more angry.

So we set about seeking out those people we felt would be good for that first all-important board of Commissioners. And as the young lady prior to me spoke, we were to have

representation of our elders and spiritual types of people. And our first board certainly did reflect that.

I do not see that in the current board. I see vacancies, and I see faces that to me, well past the century mark now myself, that are very young.

I am an elder. I do not claim to be a spiritual person per se, even though I do officiate at Indian burials, births, and so on and so forth. And at times I've been called on to give Indian names to newborns.

So, I am a little astounded that we have a board that is so short on Commissioners and that lack the elder input that it should have, much less the spiritual, and I don't see, frankly, any of that currently on the board.

CHAIRMAN ROBERTI: Are those positions specified on the board that the people must be elders?

MS. JOSLIN: Five are to be elders and spiritual leaders, one or the other, or it may be a combined elder that is both elder and a spiritual or recognized spiritual.

A while ago there was a question asked of the young lady, how is it determined that you're a person, or you're an Indian person from out there in the community or the wilderness, is a spiritual person. This is usually done through the identity of the community Indian peoples themselves.

I have never considered myself in that classification, yet I know many people that see me with those eyes and do call upon me in that respect. So, it's more a matter of acceptance by your community as a person in that light of the spiritual things.

So, this is lacking now. But as I said, the first board did have a very good representation of our elder and well-known spiritual people, and it isn't there now.

Much of this and the current problems within the board of Commissioners right now is, unfortunately, the lack of what appears to me to be the concern or interest of our current Governor. There is, in my eyes and to our people, no excuse for these seats being vacant for so long, and we've been without, until very recently, an executive secretary.

I understand that the newly appointed one is here today. I've not had the opportunity to meet nor speak with him yet, but I wish him well. He's certainly got his work cut out for him.

However, in the matter of Richard Milanovich, I did see this hostility. I have talked with Indian people from all walks of life to the north and the south, the east and the west of us. And repeatedly I am hearing over and over again the lack of confidence coming from the many and widespread Indian communities as to Richard being confirmed as a Commissioner.

If I might point out, at least these were the three things that stuck most in my mind that I am hearing repeatedly. They don't necessarily reflect my personal opinion, but they certainly are those that I'm hearing from communities.

Number one, that Mr. Milanovich treats the community people in a disrespectful manner when they speak up at meetings at the board of Commissioners. And they feel that he is looking down upon them, that his attitude is not where it should be, and doesn't communicate well with the people at the grass roots level.

Number two, that Mr. Milanovich appears to be more concerned and involved with, quote, "a staff member and her particular position and keep maintaining of that position than in the business of the Commissioners in carrying our their agenda," that which the Commission was established to carry out in the first place.

MR. MILANOVICH: Senator Roberti.

CHAIRMAN ROBERTI: Yes, Mr. Milanovich.

MR. MILANOVICH: I realize this is not a court of law, but does she have any right to sit there and make accusations as if she is speaking for these countless untold people, and then to make an accusation that this last remark that she just made?

I take offense --

MS. JOSLIN: Excuse me.

I am not making an accusation. I am only stating what I'm hearing from community, Richard.

MR. MILANOVICH: This was going in --

CHAIRMAN ROBERTI: I appreciate your point, Mr. Milanovich.

This hearing is generally a hearing of opinions, and we take it as opinion. If it is backed up by facts, then we take it as facts.

We take it as the person's opinion. If she states it as hearsay, it's taken as hearsay. And it's generally uncomfortable for everybody, but --

MS. JOSLIN: Well, I'm sorry, Mr. Chairman. I don't mean to make anybody uncomfortable.

CHAIRMAN ROBERTI: It's not something that necessarily we agree with, I can assure you of that.

MS. JOSLIN: Thank you.

SENATOR ELLIS: May I ask a question?

CHAIRMAN ROBERTI: Senator Ellis.

SENATOR ELLIS: Ma'am, I'm sorry, I didn't get your name when you sat down?

MS. JOSLIN: Joslin, J-o-s-l-i-n.

SENATOR ELLIS: Are you familiar with the Southern California Tribal Chairmen's Association?

MS. JOSLIN: yes, yes I am, sir.

SENATOR ELLIS: Do you recognize that as a legitimate organization?

MS. JOSLIN: Frankly no. I haven't for many years. I am not a member of it.

May I continue, Mr. Chairman?

CHAIRMAN ROBERTI: Yes.

MS. JOSLIN: Thank you.

And number three, coming again from the community, that there exists a pattern set by Mr. Milanovich of consistently opposing his fellow Commissioners on matters regarding board votes and general discussions in dead opposition to what the rest of the Commissioners feel is necessary in the business of the Commission.

Believing that Mr. Milanovich is not sincere in his position as a Member on the Commission --

CHAIRMAN ROBERTI: We can give you about five more minutes.

MS. JOSLIN: It will take me less than that, thank you.

But that perhaps there are some other reasons why he would choose to be a Member of the board of Commissioners.

Now, as I stated, these do not stem from my personally, okay? I recognize Richard as a person from the Indian tribal community. I realize he has a background. I feel that he's an intelligent person.

But I also, as he expressed, he has a right to his opinion; so have I. And this is coming from me now, not the community, that I feel that all of our people do have a position, a place in our communities where they can do good works for our people.

I simply do not feel that Mr. Milanovich fits this category in this particular regard as a Commissioner to the Native American Heritage Commission. Now, that is my own personal opinion from my own observations. It does not reflect in any way or belittle Richard in any regard because I am sure he has done good things, and I'm sure he does have a place. He said he was Chairman in his own community. That shows that there has to be some leadership there. I've been in those positions, so I know that it's work.

But in this particular instance, and that's what we're here for today, as a Commissioner, I really do not honestly feel that Richard would be the right person in this particular position.

And I thank you very much, Mr. Chairman, Members of this board.

CHAIRMAN ROBERTI: Thank you very much, Ms. Joslin.

Are there any questions? Senator Petris.

SENATOR PETRIS: There was a point that came up earlier which I wanted to clarify.

In addition to the nomination from your own group, are there other groups within the Indian community that are supporting your nomination?

MR. MILANOVICH: Supporting my nomination?

SENATOR PETRIS: Yes, do we have letters? Can you tell us which ones?

MS. MICHEL: You have a letter from the Southern California Tribal Chairmen's Association supporting Mr. Milanovich.

SENATOR PETRIS: Any others?

MS. MICHEL: Trinidad Rancheria, the Chairperson of Trinidad Rancheria; a Professor of Anthropology at Hayward.

SENATOR PETRIS: Yes, I have that, but I'm speaking of from within the community itself.

MS. MICHEL: The ones I've mentioned, and the Tribal Association, the chairpersons of the Tribal Associations.

SENATOR PETRIS: In the South. Is there a comparable association in the north?

MR. MILANOVICH: Yes, there is.

SENATOR PETRIS: Have we heard from them one way or the other?

MS. MICHEL: We also have the Central Valley.

CHAIRMAN ROBERTI: Tribal Council? Is there a tribal council in the North, do you know?

MS. MICHEL: I don't know.

MS. JOSLIN: Excuse me, Mr. Chairman. Maybe I can shed some light on that.

The Intertribal Council of California, which is a statewide organization and one that I have been active with for over 20 years, I no longer have been active, as I said earlier, due to ill health. They are the largest, number-wise, next to the California Indian Educational Association, in the State of California.

We have a representative here from the Educational Association that I'm sure would like to come forward and speak.

But the Intertribal Council has not endorsed this appointment.

CHAIRMAN ROBERTI: We have not received a response from them, so I take it that they're neutral.

MS. JOSLIN: May I be excused now?

CHAIRMAN ROBERTI: Yes, please.

MS. JOSLIN: Thank you.

CHAIRMAN ROBERTI: Is there any other opposition in the audience? Is there support in the audience?

Please come forward.

MR. PINK: My name is William Pink. I've served as executive secretary for the Native American Heritage Commission, 1980-1983. I also served as a Native American representative on

the California Desert Conservation Area Advisory Committee for four years, up to the period of 1981. I served on the Maliki Museum Board of Maliki Indian Museum. I'm active in Pala Indian politics, and I'm a member of the Pala Reservation in Southern California.

CHAIRMAN ROBERTI: Which reservation again?

MR. PINK: Pala.

I have my Tribal Enrollment card here if you wish to see it.

I've heard a number of different things said here. One of the things that I heard, which I think is quite mistaken, is area representation.

There is no designated areas for Commissioners, not by statute or by any other policy. At the time when I was executive secretary, yes, we did try and get representatives from various areas of the State, but it's impossible to represent Indians in this State because there are now, I think, 121 Indian reservations within the State of California. To select nine people to represent 121 separate governmental entities is impossible.

Richard comes from an area with which I am quite familiar. We are in fact related. My grandfather would have been Richard's great-great-uncle, but this is common in Southern California because we're all basically related. We could probably, each one of us, sit down and say we have at least 3,000 relatives that we're sure of.

SENATOR PETRIS: You should run for office.

(Laughter.)

MR. PINK: I was asked this morning if I would.

I talked with my tribal chairperson, Jerry Boiscrair from Pala, and he stated that yes, he in fact would support Richard's position as far as, you know, serving on this Commission.

If you want to speak it in terms of area representation, then I can think of no one better than Richard Milanovich to represent our area in Southern California. Richard is accessible, approachable, and is familiar with the issues in Southern California. As tribal chairperson of the Agua Caliente Tribe, he deals with issues which require expansion of Palm Springs in realizing that Palm Springs is an Indian reservation. Richard Milanovich and the Tribal Council basically have authority over the City of Palm Springs because Palm Springs is situated within the exterior boundaries of the Agua Caliente tribe.

He deals with issues of great concern, matters where heritage is of major importance because they have to consider city development with the preservation of burial grounds, sacred sites, and other areas within his locale, which he's had tremendous experience with.

He worked with me when I was a member of the Desert Planning Staff. He worked with me when I was executive secretary. He's familiar with the issues and is not narrow minded so much as to not be able to give me an opportunity to seek resolution of problems.

I think this is a tremendous asset to the Commission. When I served as executive secretary, we had a diverse board. Our meetings usually running two days. Some people walked away that we fought for two days. But in the end we would get together and decisions were made.

Richard is just another diverse aspect of this Commission. Having the right to either oppose, object to, or disagree with the rest of the Commissioners, I think, is finally a goal towards balance on this Commission.

I do not want to see nine members who do nothing but sit there an agree with themselves. I can tell you once there are nine members who do, the first thing they're going to agree to is how much they're going to get paid for travel.

Our heritage in Southern California, I can hear these people up here in the North talking about that. We do have a strong heritage.

I have approached this Commission twice to take action. My brother was killed in Vietnam almost 20 years ago. He was buried in a public cemetery. I cannot go there to do our traditional ceremonies, and I have asked Priscilla Hunter and this Commission twice prior to Richard's coming on board to do something about it. They have not done anything. This is four years now.

What good does it have to have nine people on there who agree with each other when all they can do is agree to do nothing? It's going to be 20 years this October, and I am going there with or without the assistance of this Commission. And I'm going to do the necessary things on my brother's grave.

Richard is going to help me achieve that goal.

CHAIRMAN ROBERTI: Thank you.

SENATOR PETRIS: Question.

CHAIRMAN ROBERTI: Senator Petris.

SENATOR PETRIS: Why do you need permission?

MR. PINK: It's a public cemetery, and the things that we do are felt to be destructive in terms of the people who operate the cemetery. And all we want is an opportunity to say we can do those things without --

SENATOR PETRIS: Where is it?

MR. PINK: In Hemet.

SENATOR PETRIS: What is the name of it?

MR. PINK: Hemet Valley Cemetery.

SENATOR PETRIS: Have you written a letter to them, or appeared before them?

MR. PINK: We've not really had opportunity to. We're talking about a Commission here that has almost a $300,000 budget, and a greater vehicle by which to approach these agencies. It's 5097.9 of the Public Resources Code, which they have the responsibility for enforcing, which they have not responded to my issue.

They have got the money; I don't.

SENATOR PETRIS: I mean, have you put it before them officially in the form of --

MR. PINK: I put it before them at public meetings twice now.

SENATOR ELLIS: Call for the question.

CHAIRMAN ROBERTI: Senator Ellis calls for the question. Thank you very much.

MR. PINK: Thank you.

CHAIRMAN ROBERTI: Is there any other support in the audience?

I have a note here from Senator Bob Presley, who is in support of Mr. Milanovich's confirmation. He unfortunately is having his bills heard in an Assembly committee right now. It's the deadline for his hearing the bills. He says:

> "Mr. Milanovich has been Chairman of the Tribal Council of the Agua Caliente Band of Cahuilla Indians for the past 3½ years and has served on the Council since 1977. In this capacity, he exercises responsibility over the management of the business interests of a large tribe as well as its day-to-day governance. He also represents the tribe in its considerable dealings with the Citird of Palm Springs, Cathedral City, and the County of Riverside. Furthermore, Mr. Milanovich is recognized as a leader in the desert community and among other tribal organizations in Southern California."

He's urging Mr. Milanovich's confirmation.

In regard to the point that was raised by two of the opponents that elders and spiritual leaders are not represented, I note that there are vacancies on the Commission and the Governor, I would expect, has the option to fill those vacancies with people who fall into those categories.

I do not know if Mr. Milanovich considers himself in one of those categories or not.

MR. MILANOVICH: According to some people, I am an elder, yes.

SENATOR CRAVEN: At forty-five.

CHAIRMAN ROBERTI: But I would say that is the problem, and that is just the rapidity in which these positions have been filled. It hasn't been terribly rapid.

Senator Craven has a motion before us. Secretary will call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello. Senator Petris. Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is three to nothing; confirmation is recommended to the Floor.

MR. MILANOVICH: Thank you.

CHAIRMAN ROBERTI: It takes three votes out of the five Members of the Committee.

Next is the Governor's confirmation of David T. Romero, Member of the State Board of Education.

Mr. Romero, we'll ask you what we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position.

MR. ROMERO: Senator Roberti, Members of the commission, good afternoon.

This is actually my reappointment by the Governor. I served for four years on the State Board of Education. Prior to that I was involved with education both elementary, secondary, and higher ed. for about 12 years.

I served in positions of vice president and president of the Board, State Board of Education, and I feel that I have worked arduously during these past four and a half years in promoting educational policies in the State.

CHAIRMAN ROBERTI: Thank you, Mr. Romero.

Are there any questions? Senator Petris.

SENATOR PETRIS: You have a bachelor's degree in philosophy?

MR. ROMERO: Yes, sir.

SENATOR PETRIS: And you're an investment counselor?

MR. ROMERO: Among other things.

SENATOR PETRIS: How do you square those two approaches to life? You must have the ultimate serenity that all of us seek.

(Laughter.)

MR. ROMERO: I just got a little tired of theoretical and went into something practical.

CHAIRMAN ROBERTI: It's difficult to earn a living in theory, obviously.

MR. ROMERO: Yes, it is.

CHAIRMAN ROBERTI: Any further questions?

Is there any opposition in the audience?

SENATOR CRAVEN: Move Mr. Romero.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Romero's confirmation do pass to the Floor.

Secretary will call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is four to zero; confirmation is recommended to the Floor.

Congratulations.

MR. ROMERO: Thank you, Mr. Roberti, Members of the commission.

CHAIRMAN ROBERTI: Next is Mr. James S. Stockdale, Member of the Unemployment Insurance Appeals Board.

Mr. Stockdale, we'll ask you what we ask the Governor's Appointees, and that is why you feel you're qualified to assume this position.

MR. STOCKDALE: Thank you, Mr. Chairman and Members of the Committee.

It is indeed an honor to be appointed to this Board, and I also consider it a great responsibility. And while it is not required, the membership of the Board, that you be an attorney, I am a licensed attorney in the state where I was born and educated, South Dakota. I've been admitted to practice before the Supreme Court of the United States.

I've served four years as an officer in the Army Judge Advocate General's Corps, and I have other legal experience. But most recently I've not been a practicing attorney.

Since '81, when I was appointed Deputy Undersecretary of Health and Human Services in Washington, D.C., to when I came to California as Deputy Secretary of the Health and Welfare Agency, Undersecretary, and most recently acting Secretary before I was appointed to this position, I think these positions in the area of health and human services have given me broader experience and made me more sensitive to the position that I've presently be appointed to.

I'd be happy to answer any questions.

CHAIRMAN ROBERTI: Thank you.

Any questions of Mr. Stockdale? Senator Petris.

SENATOR PETRIS: There's some hot issues emerging that probably are going to be coming before your Board. You may not

want to answer because they might come before you in the form of a case or something.

There's a tremendous amount of visibility now in the drug problem and the AIDS problem. Now, I guess the AIDS things has been answered by the Supreme Court decision, or was it an appellate court, that said an AIDS person can't be disqualified from unemployment insurance, or something to that effect.

Is that right? Are you familiar with that?

MR. STOCKDALE: Not specifically, sir, but I believe you're correct.

SENATOR PETRIS: With respect to the drugs --

MR. STOCKDALE: I agree, Senator, that these are emerging issues. We have seen drug cases. We have not to the best of my knowledge seen an AIDS case, though I would expect that ultimately we will just because of the nature and the spread of the disease.

I think when we're dealing with issues dealing with drugs, and I'm not only talking about what one would generally define as hard drugs but alcohol is a drug as well, is that one must balance the rights of the individual against the rights of society.

We on the Board try very hard to do this. We understand the necessity and are particularly sensitive to a person's First Amendment rights, and I think we will continue to do that.

SENATOR PETRIS: What do you think the State policy should be as it concerns the Legislature?

I think you can be helpful to us because we have a lot of bills floating around on this problem, ranging all the way from compulsory testing for practically everyone to a more restrained method of doing it where there's a reasonable cause, you might say, to believe that the drug abuser has his functions impaired and can't do a job.

Sooner or later you're going to have cases coming up of people who were fired for refusing to take the test, and thereafter applying for unemployment insurance and contending that the firing was improper or illegal, or in violation of certain statutes of the Constitution. And I think eventually those cases will work their way up to your Board.

Before they get there, can you tell us anything that would help us as Legislators to formulate policy on what the statutory policy should be in this area?

MR. STOCKDALE: You're certainly correct that they will work their way up to the Board, in fact they have in some instances.

The Board in a recent precedent decision did rule as follows: that if an employer publicized the requirement that a drug test be given, that the employee understood that this was a requirement, that the job in which the employee was was sensitive, by that the public safety is being questioned, or something peculiarly sensitive to the employment, and there is reasonable cause to believe that that particular employee is abusing drugs, then given those requirements and under those circumstances, in the event of a termination, misconduct was found.

I don't think that the Board or the Legislature should go beyond that. I think it is important to balance the individual rights with the employer rights, quite frankly. There has to be a balance. I think we're striving for that.

SENATOR PETRIS: Thank you.

CHAIRMAN ROBERTI: Any further questions of Mr. Stockdale?

Any opposition in the audience?

SENATOR CRAVEN: Move Mr. Stockdale's confirmation.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Stockdale's confirmation be recommended to the Floor.

Secretary will call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is four to zero; confirmation is recommended to the Floor.

MR. STOCKDALE: Thank you, gentlemen. Thank you, Mr. Chairman.

(Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 4:15 P.M.)

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That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of July, 1987.

Evelyn Mizak

EVELYN MIZAK
Shorthand Reporter

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STATE OF CALIFORNIA

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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, JULY 1, 1987

10:50 A.M.

Reported by:

Evelyn Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR JIM ELLIS

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

NONE

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

CLIFFORD L. ALLENBY, Secretary
Health and Welfare Agency

STANLEY W. HULETT, Member
California Transportation Commission

JOHN E. KASHIWABARA, M.D., Member
Trustees of the California State University

CAROLINA FLORES
MALDEF

ANGELA RAMIREZ,
Mecha

RITA CEPEDA, President
Raza Advocates for California Higher Education

RICARDO SALAZAR, President, Sacramento Chapter
Society of Hispanic Professional Engineers

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P R O C E E D I N G S

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CHAIRMAN ROBERTI: Governor's Appointees appearing today, Clifford Allenby, Secretary of the Health and Welfare Agency.

MR. ALLENBY: Good morning.

CHAIRMAN ROBERTI: Mr. Allenby, why don't you tell us why you feel you're qualified to assume this position?

MR. ALLENBY: Well, I've had some amount of experience in the area of government over the 24 years. I have developed some skills in trying to deal with problems and to try to look at issues, and I think I can bring those skills to bear in the health and welfare area, which does not have a small amount of issues and problems. And I believe that I can do a credible job in that area.

CHAIRMAN ROBERTI: Thank you.

I think your appointment here is one of the Governor's superior appointments, as opposed to some others that aren't quite that great.

Any discussion or debate?

SENATOR CRAVEN: Move Mr. Allenby.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Allenby's appointment as Secretary of Health and Welfare Agency.

Any discussion or debate? Any opposition in the audience?

Seeing none, Secretary will call the roll -- oh, Senator Petris.

SENATOR PETRIS: I'm trying to find -- if I can be indulged for about a minute.

I just want to get into one or two areas, Mr. Allenby.

One is, as an expert in finance where you've had a considerable impact, I'm concerned about the use of the low estimates for long-range Medi-Cal costs and the caseload projections which resulted in pretty heavy underfunding, which in turn required a reduction by 10 percent in the provider rates and even more substantial cuts in the fiscal year for the Medi-Cal budget for next year.

Their decision in the Department of Finance -- I'm talking now about Finance, but I guess they base that on estimates they get from your shop -- their decision to use the low-range estimate resulted in the cuts. They said, "Well, we're not going to have enough money, so we're going to have to cut."

Do you see any method that can be used to try to avoid that in the future, or is that just an inevitable type of thing, unavoidable?

MR. ALLENBY: Well, I think that it is -- I don't want to use the word "unavoidable", but it's close to unavoidable. It is a judgment call.

I think the real -- the real plus side to the system that we use is that clearly the Department of Health Services has the opportunity to make its estimates. Those estimates are made available publicly to the Legislative Analyst, Legislative staff, and the Department of Finance. The Department of Finance publicly, based on what the Department of Health Services did,

made an adjustment, had a rationale for that adjust. That rationale was discussed before the Legislature.

It did not prove to be correct, but I think the fact that it was an open process, in that there was discussion on the part of the Legislature and the executive branch, and had a substantial amount of review, is about as good as we can do given the system that we have.

SENATOR PETRIS: What troubles me is that it was reflected in just about all the departments and all the agencies, and that's why when we got the billion point something discovery, you know, after the May estimates, and we were all jumping up and down with joy, the Governor announced, "Well, we've already spent a billion of it because we were underfunded.

And as I remember, there was vigorous debate, and there was a difference in interpretation. The Analyst, for example, repeatedly warned us that the Governor's estimates on the needs were much too low. The needs would be higher based on information we had. And it looked to us, some of us, like a deliberate under-projection, I don't know, to make it look like the budget would be smaller than it really was going to be and so forth.

MR. ALLENBY: I think in the Health and Welfare area there was -- there was a difference of opinion. There was a belief that basically that there'd been an increase in the utilization without a commensurate increase in the number of people, that there was something that could be done about that. And that was where the debate was in the Medi-Cal area: whether utilization was going up or not going up.

I think history has proven that we've had both things occur. We have had some modest increase in utilization, and also an increase in the number.

It is my hope that we can, number one, at a minimum maintain the process that we have so that we can have open and frank discussions about where these things are going. And that if there is a belief that we are systematically underestimating, I can assure you that I will make every effort to dispel that belief in the future.

SENATOR PETRIS: Thank you.

CHAIRMAN ROBERTI: Thank you, Senator.

Any further discussion or debate?

There was a motion before us, Senator Craven moved.

Any opposition? Seeing none, Secretary will call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to nothing.

MR. ALLENBY: Thank you very much, Mr. Chairman.

CHAIRMAN ROBERTI: Confirmation is recommended to the Floor do pass -- do confirm, excuse me.

Mr. Stanley W. Hulett, Member of the California Transportation Commission.

MR. HULETT: Good morning, Mr. Chairman, Members of the Committee.

I am Stanley Hulett, current Member of the California Transportation Commission.

CHAIRMAN ROBERTI: Pardon?

MR. HULETT: I was just introducing myself, Senator.

CHAIRMAN ROBERTI: Yes, I think we know who you are, nevertheless thank you for the record.

MR. HULETT: I was reading the sign here.

(Laughter.)

CHAIRMAN ROBERTI: Please tell us why you feel you're qualified to assume this position.

MR. HULETT: Well, I've had the opportunity now for nearly 15 months to serve as a Member of the Transportation Commission, filling out the term of a former Member of the Commission, and I've learned a great deal. And I think I have a greater understanding now of the need for balanced transportation needs in the State of California, and I think I can serve the people well in that position.

CHAIRMAN ROBERTI: What's your position on toll roads?

MR. HULETT: Pardon me, sir?

CHAIRMAN ROBERTI: What's your position on toll roads?

MR. HULETT: My position on toll roads.

Having lived in the East for several years, where toll roads have been very effectively used, I think they may well have a place in the State of California, but I think it's something that we're going to have to spend a great deal of time deliberating before that decision is made.

We have a very different situation here than some of the highly urbanized Eastern states, but I think in looking at the transportation needs of California, I think we really have to look at all opportunities.

CHAIRMAN ROBERTI: Do you think we should raise the gas tax to fund more transportational services?

MR. HULETT: Well, I think we need more money for transportation services.

Senator Deddeh's bill, supported by the administration, seeking short-term notes rather than gas tax appears to be a viable alternative which the Senate, I think, has agreed to or is about it. I would strongly support that. There's no question that we need to have an infusion of funds into the program. We need it badly.

CHAIRMAN ROBERTI: Any further discussion? Senator Petris.

SENATOR PETRIS: Where are we going to get it?

MR. HULETT: Well, as I say, the program that the Governor's put forward and Senator Deddeh is supporting in -- or sponsoring in the Senate would provide, Senator Petris, for short-term notes.

I think there has been some misconception about the fact that they would be long-term bonds when in fact what's being looked at are less than five-year notes. And as a matter of fact, if you look at the construction industries during that period, actually I think that the increase in construction costs will almost offset the interest costs during that period of time by being able to advance the construction period.

So I would support the concept as in Senator Deddeh's bills that would in fact raise the funds through short-term debt instruments.

SENATOR PETRIS: Why not go for a gas tax increase, the traditional source?

MR. HULETT: Well, that is the more traditional source, and our Commission did discuss that at great length, and in the final analysis the Governor's decision was that he wanted to go with short-term notes.

If that's not successful, I think very clearly then we need to look at the possibility of a gas tax increase.

CHAIRMAN ROBERTI: Any further discussion or debate?

SENATOR CRAVEN: Move Mr. Hulett.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Hulett's confirmation be recommended to the Floor for a Member of the California Transportation Commission.

Is there any opposition in the audience? Seeing none, the Secretary will call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to nothing; confirmation is recommended to the Floor.

MR. HULETT: Thank you very much, Mr. Chairman and Senators.

CHAIRMAN ROBERTI: Dr. John E. Kashiwabara, Member of the Board of Trustees of the California State University.

Dr. Kashiwabara, we'll ask you what we ask all the Governor's Appointees: Why you feel you're qualified to assume this position?

DR. KASHIWABARA: Thank you.

As you reviewed my resume, I have been active in my community for 33 years, a lot of that in public service and community service.

I think that with the variety of activities that I have been involved in, I have established my integrity, my sincerity in the interests of my community, a lot of that having to do with the young people in the community as well as education.

I also feel that as a physician and the only member of the medical profession on the Board of Trustees, that I serve a

useful resource person, and I have already started to make considerable input in regards to the issue of health in the California State University system, the review of the student health centers, and quality assurance for the staff.

CHAIRMAN ROBERTI: Thank you very much, Doctor.

Any questions of Dr. Kashiwabara? Senator Petris.

SENATOR PETRIS: Is your position as Medical Director of the community college district a full-time thing?

DR. KASHIWABARA: No, it's part-time.

SENATOR PETRIS: You have your normal private practice?

DR. KASHIWABARA: Yes.

SENATOR PETRIS: And then you also are called in by them?

DR. KASHIWABARA: Yes.

SENATOR PETRIS: What do you do there? You oversee their medical program?

DR. KASHIWABARA: Much of my responsibilities involve preemployment physical examinations to --

SENATOR PETRIS: Of what, any employee --

DR. KASHIWABARA: New applicants to the district.

SENATOR PETRIS: I see.

DR. KASHIWABARA: I will rule on the advisability of allowing the employees returning to work from injury or from illness. I also do considerable work in the area of student services, primarily in athletic medicine, and I do all the pre-season athletic physical examinations.

SENATOR PETRIS: How long have you been on the Board now?

DR. KASHIWABARA: On the CSU?

SENATOR PETRIS: Yes, the CSU.

DR. KASHIWABARA: I attended my first meeting in September of '86.

SENATOR PETRIS: Were you there when they created the new position of Vice Chancellor?

DR. KASHIWABARA: That was just recent. In fact, it was on June 1st that that matter was --

SENATOR PETRIS: Has that been adopted?

DR. KASHIWABARA: Yes.

SENATOR PETRIS: Can you tell us why? What was the need to create a Vice Chancellor?

DR. KASHIWABARA: This was a part of the reorganization of the Cancellor's Office, that there was a need for it. And unfortunately, that particular special board meeting discussing that matter, I was out of town and was not able to be there, but I was aware that it was coming up.

SENATOR PETRIS: What is your position the problem of tuition? We've had creeping increases in tuition for students over the years. Some of our Members think that's a good way to go, and others feel we ought to limit that as much as possible because we should stick to the traditional policy of having the taxpayers provide enough money to do that so it doesn't fall too heavily on the student.

How do you see that?

DR. KASHIWABARA: I think student fees is a necessity where the State funding does not meet the needs of providing the best education possible for our students.

I have personally talked to students in regards to the student fees, and the serious students feel that they are willing to pay that increase in student fees in order to get the quality education that they are seeking.

I am also aware that those who are not able to meet the student increase in fees have student fee assistance programs.

SENATOR PETRIS: What is the fee now? What is the total amount that's required for a student at a State University?

DR. KASHIWABARA: I'm not sure of the exact amount, sir.

SENATOR PETRIS: Thank you.

CHAIRMAN ROBERTI: Thank you, Doctor.

Any further discussion or debate? Any opposition? Anyone with a statement to make independent of opposition or support?

MS. FLORES: Good morning. I'm Carolina Lena Flores. I'm from the Mexican-American Legal Defense and Educational Fund.

Although we commend the Governor for having Asian representation on the CSU Board of Trustees, we are appalled that there is no Hispanic representation in any of the candidates that are being proposed to CSU.

I think in a state --

CHAIRMAN ROBERTI: Are there any Hispanics on the Board currently?

MS. FLORES: We had a Hispanic representative on there that was attorney Celia Ballesteros, now a councilperson for San Diego. With losing that one sole Hispanic voice, there is now no Hispanic representation on the Board of Trustees.

I don't want to bore you with demographics that I'm sure you've heard since you've started here, but I think that it's an affront to the Hispanic community, and as representing the public interests, we really cannot let this go unnoticed.

I wanted to go on record that MALDEF is really concerned and asks the Rules Committee to really look at this lack of Hispanic representation in all future appointments. It is something that cannot be ignored. To deny Hispanics voice and representation in all of the appointments is really a serious concern, because in education specifically, it upholds a segregated de facto education system. The haves will be educated, the have not.

We have such a so -- loss of Hispanic students, Hispanic faculty, staff and administration, and now we have policy. The people that make the decisions to make these public colleges to be conducive to what the needs of the changing profile of the State are, and now we have no Hispanic voice in that.

And I think that that is something that you cannot ask the Hispanic community to accept. It is unacceptable, and it must be noted.

SENATOR PETRIS: Mr. Chairman.

CHAIRMAN ROBERTI: Senator Petris.

SENATOR PETRIS: I happen to agree with you, but I think you're in the wrong forum.

Have you addressed the Governor on this?

MS. FLORES: We have attempted to make meetings with the Governor without success to date. And for this reason I want to go on public record as having stated this.

SENATOR PETRIS: Of course, the last couple or three weeks the Governor has been pretty tied up. I hope you're talking about some longer period than that.

I mean, if I were the Governor, I'd have a lot of difficulty trying to squeeze in appointments of this nature during this particular time.

What about prior to that?

MS. FLORES: I'm not prepared to really answer that in depthly [sic].

I am a part of a coalition also. MALDEF assists and is a part of the CCHO, which is the California Coalition of Hispanic Organizations.

We had initially started trying to make attempts at meeting with the Governor on various issues as of December of last year. Since January of this year we have met regularly in different parts of the State, working with his office to try and set up a meeting. As a result of many meetings, many statewide organizations' presidents' meetings in order to meet with the President [sic] we have come up with no -- without success to date.

But I would not want to bring that whole issue up here because it involved many others.

CHAIRMAN ROBERTI: How many members are there on the Board? Do you have that?

MS. MICHEL: Let's see. There are 24 total members, 18 appointed by the Governor; two of those, a student and faculty member, are not confirmable.

CHAIRMAN ROBERTI: So of the 22, how many of those are Governor Deukmejian's appointments?

DR. KASHIWABARA: Sixteen, sir.

CHAIRMAN ROBERTI: Sixteen?

MS. MICHEL: They are correct. The Hispanics have been replaced. There is no representation.

CHAIRMAN ROBERTI: What about representation from other minority groups, or my general interest here?

MS. MICHEL: Two Blacks and an Asian-American.

CHAIRMAN ROBERTI: Dr. Kashiwabara is the only Asian-American?

MS. MICHEL: That is correct.

CHAIRMAN ROBERTI: There are two Blacks. Who did Dr. Kashiwabara replace?

MS. MICHEL: Wallace Albertson.

CHAIRMAN ROBERTI: First, I think it is important for the witness to come testify, and I don't think she's testifying against Dr. Kashiwabara.

MS. FLORES: No, absolutely not. We support his appointment.

CHAIRMAN ROBERTI: But I think it is important.

Sometimes when we make our appointments, we don't meet all the requests made of us of various groups, including Hispanic groups, but it is always a factor when you make the appointment.

It's hard to believe that the Governor, you know, an intelligent, sophisticated man who is a politician, making 16 of the 22 appointments now, has not appointed a Hispanic. I mean, you just cannot -- that's just not by accident at that point. You have to work at that.

MS. FLORES: I agree.

I just wanted to close by saying that MALDEF itself has a leadership program that is nationwide. We have hundreds of people that are students. These are Hispanic adult professionals that are Masters, Ph.D. levels, that go through our grooming program in order to be groomed to sit on commissions, boards, and such appointment as this.

To date, there hasn't been contact from the Governor's Office or response to requests as far as utilizing the resources that MALDEF has nationwide.

There's also the Chicano Youth Leadership Program which has Chicanos that are straight-A students, have alumni that are attending colleges now that belong to two or three civic groups in the colleges. There are such associations as the Education Issues Network, which is hundreds of people that are Hispanic professionals in education at all levels. RACHE, which is all post-secondardy Hispanic professional groups that are 300 listed professionals alone that they have available. The Hispanic Law

Enforcement Task Force that I also am a member of has specific strategies for Hispanic recruitment in the hiring that we've been working with two State agencies.

So, these resources have already been made available, and I am willing to of course continue and to try and attempt to make contact with the Governor, but these resources are all already available to the Governor's Office.

I really want this to go on public record, to acknowledge that this continued effort is there.

CHAIRMAN ROBERTI: Well, speaking for myself, and I think I reflect some sentiment among the Democrats in the State Senate, I think we're going to go on -- I think it's safe to say that we will not confirm another appointment on this Board unless there is a Hispanic who is one of the appointees.

I think it's necessary to say that early so that anyone else who is appointed knows up front that if the appointment is held, it's not because of their personal qualifications.

MS. FLORES: Absolutely.

CHAIRMAN ROBERTI: And certainly we don't want to say this in regard to Dr. Kashiwabara, because the Asians deserve representation --

MS. FLORES: Absolutely.

CHAIRMAN ROBERTI: -- on this Board, absolutely.

But I'm surprised that you're the only one in that regard as well.

But I think it's important because even if another minority is appointed by the Governor --

MS. FLORES: It still will not be the Hispanic voice.

CHAIRMAN ROBERTI: -- I think there has to be a Hispanic. We would just have to hold that one until such time as the Governor appoints a Hispanic, because now of the major ethnic groups in the state, the Hispanics are not represented, and in this state we just cannot tolerate that situation out of 22.

MS. FLORES: I think the legal opinion has been that --

CHAIRMAN ROBERTI: I didn't realize until you testified that things had gotten that bad.

Yes, let the witness say something, then Senator Petris, then Senator Craven.

MS. FLORES: I just wanted to say that it's been legally acknowledged that Hispanics are the sole ethnic group that have been historically under-represented at all levels in the State of California. Others don't have that historical emphasis.

CHAIRMAN ROBERTI: Senator Petris, then Senator Craven.

SENATOR PETRIS: Yes, I want to concur in just about everything you've said.

The under-representation goes back over other administrations as well, both parties. I think there is a difference, however, between the two.

I'd like to recommend in addition to the coalition you have, like all ethnic groups you have people in both parties.

MS. FLORES: Yes.

SENATOR PETRIS: And they engage in the election process.

It seems to me that those in the Hispanic community who have been solid, outstanding Republicans --

MS. FLORES: We're working on that.

SENATOR PETRIS: -- they ought to take the lead and go in and see the Governor. I remember the Viva Duke --

MS. FLORES: That's coming around the bend.

SENATOR PETRIS: -- all over the place, and I remember the LULAC convention of this past week where seven Democratic Presidential candidates made their appearance, two of them speaking Spanish, only one Republican. And they were severely criticized. They just seemed to be ignoring them.

You know, those go in cycles. Sometimes both parties are guilty of the same thing.

But it just seems to me as a practical matter that people who are active in the Republican Party within the Hispanic community ought to take the lead. They'd have a better chance to get the Governor's ear. Nothing wrong with that. That's the way it works.

I'm sure that some of the other appointees came in not because of their ethnic background, but because they got the Governor's attention in other ways. That's part of the process, and it's quite legitimate.

I urge you to really, in addition to what you're doing here, you really ought to push that.

MS. FLORES: We're working it.

SENATOR PETRIS: Yes.

CHAIRMAN ROBERTI: Senator Craven.

SENATOR CRAVEN: Oh, I think I'll just defer.

CHAIRMAN ROBERTI: Senator Mello.

SENATOR MELLO: I certainly agree with Senator Petris when he responded by saying you're before probably a very sympathetic forum rather than, you know, taking this directly to the Governor.

I think it's unthinkable that about 20 percent of the population are Hispanic, and yet they're not represented on this and many other boards and commissions.

The question I wanted to ask you pertains to the California State University. Have you checked to see if any -- I asked Nancy Michel the same question -- of the Regents are Hispanic currently? I know we have Asians, but are there any Hispanics on the Board of Regents for the university system?

MS. FLORES: Vilma Martinez, I think, is -- I don't know if she's still on.

I'd like to --

SENATOR MELLO: We can check.

The other thing that Senator Roberti said about, I see that Dennis Campbell has been appointed but not yet confirmed, and he's the one that replaced Ms. Ballesteros, right?

MS. FLORES: Yes.

SENATOR MELLO: So we'll be having a hearing on him at some date.

CHAIRMAN ROBERTI: Does the Governor have any other appointments coming up?

SENATOR MELLO: I'm sure Nancy Michel's going to answer that but it is --

MS. MICHEL: In March of '88.

CHAIRMAN ROBERTI: March of '88; that's a long, long time.

SENATOR MELLO: Dennis Campbell will be coming up when it's transmitted. He's have to be the person that replaced your person on there.

CHAIRMAN ROBERTI: Ms. Ballesteros.

Senator Craven.

SENATOR CRAVEN: Let me say that if I was the Governor, I would have long since looked around for the best and most qualified Hispanic I could find to appoint. And I would do that probably not particularly because of compassion but for political reasons.

Basically that's what you're talking about, is politics.

By the same token, I think to say that we're not going to do thus and so because this person is not a Hispanic is not correct because it is the Governor's choice that we're talking about, and that's an eclectic thing. And he chooses the person he feels best qualified.

I might say to you: How many Irish are on that? Who represents me?

CHAIRMAN ROBERTI: Well, I'm the one, Senator, that said that, not -- I forget your name.

MS. FLORES: Carolina Flores.

CHAIRMAN ROBERTI: Not Ms. Flores.

I normally would agree with you, except that out of 22 it's --

SENATOR CRAVEN: I started with a disclaimer. I agree with you. I think that just goes without saying. I think that's just smart.

CHAIRMAN ROBERTI: That's staggering, and namely for the reason that you said, for politics.

SENATOR CRAVEN: Well, let's be honest about it. It's not altruism that does these things.

CHAIRMAN ROBERTI: That's why it's so incomprehensible.

SENATOR CRAVEN: But it's a recognition of people, but by the same token, I don't like to classify or categorize it.

I'll tell you, Carolina, I had the same problem with the august Mayor of San Francisco who, referring to a councilmanic district one time said: Oh, that's the homosexual seat.

That's discriminatory when you do that.

MS. FLORES: Senator Craven, I'd like to not mix too many issues with this one boat because I don't want to sink it.

What I'd like to say is -- what I wanted to say is, you know, I have attended various Association of Mexican-American Educators meetings, and those people have commented informally: If the Governor wants a blue-eyed, red-haired Hispanic education professional, we'll find him one.

The idea is that there has to be someone that's experienced in working with Hispanic education.

SENATOR CRAVEN: Yes.

MS. FLORES: There has to be someone that has a thorough understanding, a sensitivity about which of the methodologies, strategies, curriculum and faculty styles are needed in order to shore up the under-representation of Hispanics, especially motivated, to represent the under-represented populations.

There are such people. There are many people, but they're not being recognized.

I understand what you're saying, and I think I'd like to focus in that this one point is, we have no Hispanic representation at this point, and that is totally unacceptable.

I apply to your good sense and to also your support of your Hispanic constituents in your area to try and get that voice there, especially in the public college system statewide. The are the model state for the rest of the nation.

SENATOR CRAVEN: Yes.

MS. FLORES: We must have that acknowledgement.

SENATOR CRAVEN: What happened to Celia?

MS. FLORES: She's a very successful councilperson for San Diego and --

SENATOR CRAVEN: She's no longer --

MS. FLORES: -- she went on. Her term expired.

SENATOR CRAVEN: Her term is finished.

That's still a vacant term?

MS. FLORES: Yes, you will be considering the nomin -- the candidate proposed on July 8 for that Ballesteros replacement.

SENATOR CRAVEN: And who is that?

CHAIRMAN ROBERTI: Mr. Campbell.

MS. FLORES: I think it's Theodore Bruinsma or --

SENATOR CRAVEN: I see, so it's not a Hispanic.

MS. FLORES: I'm not sure.

SENATOR CRAVEN: Well, if there's anything -- I'm one of the Republicans on the Rules Committee.

MS. FLORES: Oh.

SENATOR CRAVEN: If there's anything that either Senator Ellis or myself might do on your behalf, on behalf of the people you represent, to arrange a meeting with the Governor, I will pledge to you that I will do everything I possibly can to arrange it.

MS. FLORES: Thank you, Senator Craven. I will follow up with that. Thank you very much.

SENATOR CRAVEN: You're entirely welcome.

CHAIRMAN ROBERTI: Any other testimony?

Yes, please state your name and who you represent.

MS. RAMIREZ: My name is Angela Ramirez, and I'm a student at Sacramento State University.

I also am here today as a representative of a nationwide Latino student organization. We're most active here in California. The name of the organization is Mecha.

This morning I'm giving testimony on this issue because we held a meeting this past weekend in San Francisco with other student organizations statewide, Black and Asian student organizations. This issue came up about Governor Deukmejian's appointees.

I had read the CSU State Line which gave background to these two appointees. And when I first read it I thought it was a misprint of some sort because reading their backgrounds, I came to question to me what sort of criteria was used in selecting these candidates, because I would think or presume that some sort of education type of background would be necessary being that they would be making decisions on policies that affect state colleges.

In our discussion at this statewide meeting, the students -- basically we have come up with a report card on Governor Deukmejian's educational practices and oversights. And our report card on him would exemplify him as a dropout in these areas.

The fact that he cannot find, was unable to find, qualified Hispanics to appoint to the CSU Board of Trustees blatantly exposes to us of his disconcern to ensure relevant and quality education for all groups of students here in the State of California.

And with the different organizations such as MALDEF and RACHE and other organizations and agencies that are available to seek resource in selecting names, we find that this is just disappointing that he was not able to find that qualified Hispanic. And the members of our student organization, if necessary, are prepared also to help if he needs assistance in finding those people because we do have access to those resources and know that there are those quality -- qualified candidates to do this.

So, I also wanted it to go on record and to notify that students which are in the different districts in this state are concerned about what is taking place, and we are raising this as an issue.

I also brought copies of a newspaper I wanted to share with each of you. There's a march on Sacramento that we had for educational rights where we brought 7,000 students and educators. I have a copy for each of you.

CHAIRMAN ROBERTI: Thank you very much. Please give it to the Sergeant and he can pass it out.

Any other testimony? Please come forward.

MS. CEPEDA: My name is Rita Cepeda. I'm the statewide President for the Raza Advocates for California Higher Education.

Much of what I wanted to say has been said, so I'll be brief but I'll begin by stating that we are most pleased with the appointment of the nomination of Dr. Kashiwabara. We are aware of his integrity and his dedication to education and are most supportive.

It's unfortunate that we have to take this time to nevertheless register our discontent with the Governor's inability and insensitivity, and we do think it's purposeful, by the way, about the fact that we are now devoid of Hispanic Trustees on the CSU Board. This is an eight-year appointment.

We have noted, by the way, one additional fact I would like to add to the things that have been mentioned, is the fact that Trustees of other ethnic groups have been replaced with individuals from the same ethnic background with the exception of

Hispanics. So we do not think this is an oversight, but it is rather a clear statement.

I do want to take notice also of the fact that we have worked very hard for the last eight years to do precisely the same kinds of things we're being told to do here today: to prepare, to be in line, to mentor, to talk to the Governor, to work through a number of other arenas just to arrive at a point at which all of our working through the system has once again failed. So it is not as if we are where we were 10 years ago. We've been very active in this area, and I've contacted many of you with our concerns.

We were ready. We were prepared, and we were again under-represented and unheard.

CHAIRMAN ROBERTI: Senator Craven.

SENATOR CRAVEN: May I move the Doctor's confirmation?

CHAIRMAN ROBERTI: Yes.

Senator Craven moves Dr. Kashiwabara's confirmation be recommended to the Floor.

On the motion, Secretary will call the roll.

SECRETARY WEBB: Senator Ellis. Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is four to nothing; Dr. Kashiwabara's confirmation is recommended to the Floor.

Congratulations, Doctor. Even though the testimony was not directed at you, I guess it didn't hurt either for you or for us to hear of the anxiety of a very important part of our state regarding these appointments.

Thank you.

Yes, please just state your name.

MR. SALAZAR: Hello. I'm with the Society of Hispanic Professional Engineers.

CHAIRMAN ROBERTI: Please testify in general on the appointment. I'm sorry.

MR. SALAZAR: We do have a prepared statement.

Honorable Senator Roberti and Honorable Senators of the Senate Rules Committee, my name is Ricardo Salazar, and I am the President of the Sacramento Chapter of the Society of Hispanic Professional Engineers, also known as SHIP Sacramento.

To my side is Stella Hernandez, an associate member of the Society and a Chair of our Scholarship Committee and a very key and active participant in our Community Education Committee.

The Society of Hispanic Professional Engineers is a national nonprofit organization established in 1974, dedicated to the development and advancement of Hispanics in the engineering and science fields. With a membership of over 6,000 the national Society currently has 72 student chapters and 18 professional chapters throughout the United States.

SHIP Sacramento is the local chapter which began in 1984. There are currently approximately 300 students and professional members in this chapter which is represented by students from four colleges and universities, and professionals from both the government and private industry.

We'd like to go on record that we are here today to issue a concern regarding the absence of Hispanic representation on the California State Board of Trustees. It is our feeling that this absence can have a significant detrimental effect on the Hispanics' quality of life which is so often determined by our access to education and our ability to take full advantage of its benefits.

Our objective is to ensure that the views and perspectives of Hispanics are properly represented in any decision-making process that affects our quality of life. This applies to our home and work environment, local, state and federal governments, and first and foremost, our input into the education system.

As you're all aware, the rapidly changing demographics of this great state of California reflect an ever increasing Hispanic population. As you're also aware, there is currently a vast under-utilization of this segment of our society.

We exist to assist in developing this segment to its fullest potential. This is being achieved by providing resources, particularly human resources, in the technical areas of science and engineering. An example of this is a program that we are currently implementing called the Magic of Science and

Engineering, La Magia de Ciencia y Ingenieria. A copy of the program has been submitted for your information.

On a more global perspective, these human resources we are speaking of help maintain our technological lead in the world, meeting the growing competition from abroad, and address the challenges in providing the best goods and services to our society. Proper representation from all segments of society provides economic and social benefits.

It become very clear that the California State University Trustees must reflect the Hispanic segment of California society. It is incumbent upon us all and a moral obligation to ensure that Hispanics are properly represented at all levels of our educational system, that there is sensitivity to and understanding of the unique and special qualities of our culture, and that issues such as the outrageously high Hispanic high school dropout rate are addressed immediately.

In summary, we offer our help and support now and in the future. We can access our network to provide a list of potential applicants for these honored positions, or we can assist in reviewing and making recommendations from the current lists.

This can be a win-win situation.

Muchisimas gracias.

CHAIRMAN ROBERTI: Thank you.

Is there anyone else? Any questions?

Hearing none, thank you very much for your testimony.

MR. SALAZAR: Thank you, Senators.

(Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 12:20 P.M.)

--oo0oo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of July, 1987.

EVELYN MIZAK
Shorthand Reporter

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SENATE RULES COMMITTEE

STATE OF CALIFORNIA

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 19, 1987

3:07 P.M.

Reported by:

Evelyn Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR JIM ELLIS

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

THEODORE A. BRUINSMA, Member
Trustees of the California State University

CHRISTINE DIEMER, Director
Department of Housing and Community Development

BERNIE AISPURO, Superintendent
California State Prison at Kings County

ALFONSO A. GOMEZ, Superintendent
California State Prison at Kings County, Avenal

WILLIAM A. MERKLE, Superintendent
California Correctional Center at Susanville

JOHN M. RATELLE, Superintendent
Richard J. Donovan Correctional Facility at Rock Mountain

CHARLENE MITCHELL, Member
Board of Directors
Hastings College of the Law

JOHN A. SPROUL, Member
Board of Directors
Hastings College of the Law

RALPH ABASCAL, Member
Board of Directors
Hastings College of the Law

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PROCEEDINGS

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CHAIRMAN ROBERTI: Governor's Appointees appearing today, Mr. Theodore A. Bruinsma, Member of the Board of Trustees of the California State University.

Please come forward.

Mr. Bruinsma, we'll ask you what we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position?

MR. BRUINSMA: Well, I think the Members of the Committee are fairly familiar with my background. I think I would like to just express a little bit of my interest in education.

I have served for seven years on the -- as an elected official of a local school board. I was unfortunate enough to serve as the Dean of Loyola University School of Law. I presently serve on the advisory committees, Dean of Engineering, U.C.L.A., at Berkeley, and also the Graduate School of Management at U.C.L.A.

I think my legal and business experience helped me with regard to the areas of governance and with regard to funding. I think my long interest in education and my experience qualifies me for the most important aspect of the C.S.U. system, and that's to be sure we get the quality of education that our citizens deserve.

I'm honored, willing, and able, and anxious to serve, and I've enjoyed it and look forward to that service.

CHAIRMAN ROBERTI: Thank you very much.

The only reservation that I had about your appointment was that this would continue the lack of presence of Hispanics on the Board, which I think is something that the administration is going to have to rectify.

However, I would also like to note, besides all your other qualifications, that you have a number of people representing major Hispanic organizations write the Committee in your support, and I think I would like to enter those names in the record: Northern California Chapter of the Society of Hispanic Professional Engineers; Mr. Raymond Rodriguez, Executive Officer of the Latin Business Association; the League of United Latin American Citizens, which I might add parenthetically is the largest Hispanic organization in the country; Leopoldo Ramos, Assistant General Manager of KMEX; Mr. Rich Sanchez, President of Amigos de SER; the American G.I. Forum, which may rival L.U.L.A.C. as one of the largest Hispanic organizations in the country; as well as Comision Feminil, a group of business and professional women of Hispanic origin.

So, your support there is very impressive as well as your background, and I think you'll make an excellent member of the Board.

MR. BRUINSMA: Thank you very much, and I can assure those organizations that their interests will be represented.

Could I just make note, Mr. Chairman, that Mr. Sanchez did come with me today, and I'd like to just acknowledge his presence, although --

CHAIRMAN ROBERTI: Very good.

Mr. Sanchez, will you stand up? Very good, there you are. Thank you for coming.

MR. BRUINSMA: Thank you very much, sir.

SENATOR CRAVEN: Mr. Chairman.

CHAIRMAN ROBERTI: Senator Craven.

SENATOR CRAVEN: May I move the appointment of Mr. Bruinsma.

CHAIRMAN ROBERTI: Senator Craven moves the appointment of Mr. Bruinsma.

Is it Mister or Doctor Bruinsma?

MR. BRUINSMA: No, it's Mr. Bruinsma.

CHAIRMAN ROBERTI: Is there any opposition in the audience?

Seeing none, Secretary will call the roll on Senator Craven's motion.

SECRETARY WEBB: Senator Ellis. Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is four to nothing; confirmation is recommended to the Floor.

Congratulations.

MR. BRUINSMA: Thank you very much, gentlemen.

CHAIRMAN ROBERTI: Also I think for the record we would indicate that Lt. Governor McCarthy, Senator Beverly, Senator Cecil Green, Bill Honig, Superintendent of Public Instruction, Mr. Dale Ride, Chair of the Board of Trustees of C.S.U., and Claudia Hampton, Trustee of the California State University also wrote in support of the appointment.

Christine Diemer, Director of the Department of Housing and Community Development.

MS. DIEMER: Good afternoon.

CHAIRMAN ROBERTI: Good afternoon to you.

We'll ask you the same question, why you feel you're qualified to assume this position?

MS. DIEMER: Well, Senator, I lived in California all of my life. I'm a product of the California education system.

I've worked in state government since 1981. I've worked on front line housing issues since 1983. As you know, I was previously Deputy Secretary for Housing at the Business, Transportation and Housing Agency. I've been at the Department since May of last year when I was appointed as interim Director, and I believe I've been fulfilling all the duties that are required, and have effectively managed the Department since I've been there.

CHAIRMAN ROBERTI: Thank you very much.

Are there any questions of Ms. Diemer? Senator Petris.

SENATOR PETRIS: Yes, we have another example here of a good person being appointed by the Governor to do a job who isn't given the clout to do what needs to be done.

I've read some good things about you in the local press, and I've heard from individuals.

But when I look at what's happening in the Department, in spite of your best efforts, it seems to me that from the standpoint of the mission of the Department in carrying out legislation that we're trying to enact, it's really a shambles.

I don't mean that in the sense of administrator chaos, but programs just aren't being programmed. For example, the Department is supposed to issue a biennial update of the Statewide Housing Plan as provided in the Health and Safety Code.

MS. DIEMER: That's right.

SENATOR PETRIS: There hasn't been one since 1982.

The question is, how come?

Senator Roberti inquired about that in May of this year. The answer was it would be completed by late summer of this year, yet it hasn't come in.

MS. DIEMER: That's right.

SENATOR PETRIS: Can we start with that, and maybe you have nothing and no activities to tell us about, I don't know.

MS. DIEMER: Well, I'd like to at least address what I have personally been involved in and have accomplished with respect to the Statewide Housing Plan.

I was appointed interim Director last May, May of '86. At that time it was obvious that the Statewide Housing Plan was something that should be addressed immediately. And at that point we went through some internal revisions of what was a draft that no one had seen outside of the Department. We went through

some, again, revisions, but I think importantly, I called for and met with housing constituents twice: once in May of '86 and once in December of '86.

The whole purpose of that was to discuss with them, for their input, some of the policy discussions and action items in that draft of the Plan.

SENATOR PETRIS: Who were they? The normal organizations that get involved?

MS. DIEMER: They were -- well, they were organizations that you deal with quite a bit: California Rural Legal Assistance, the Western Center on Poverty, the Building Industry Association, Association of Realtors. About at least eight different groups were at that meeting twice.

We incorporated a lot of their input, and we had to disagree also on a lot of their input. But the point is that since I've been there, it has been a top priority.

And I can understand the concern. There has not been a Statewide Housing Plan as called by the statute since 1982. Here it is August of 1987, and you're wondering where it is. And I am here to tell you that it is in its final review stages, which is, as you know, we go through certain levels of review within the administration. And it will be released shortly. In the next few weeks it should be out.

SENATOR PETRIS: Have you been working on it yourself?

MS. DIEMER: Personally have been involved with it.

SENATOR PETRIS: Are you generally familiar with the contents?

MS. DIEMER: Generally familiar, yes.

SENATOR PETRIS: Can you give us a peek at it? Let me ask you some questions on it.

MS. DIEMER: Sure.

SENATOR PETRIS: If I may.

The 1982 Plan -- a report, rather; it's not a separate Plan. It's just an update.

MS. DIEMER: Yes.

SENATOR PETRIS: In which it's expected that the Agency will outline goals for meeting the statute and, you know, perhaps suggesting whatever legislation is necessary to keep the thing up to date.

When it was published in '82, the Plan indicated that with respect to goals for construction and rehabilitation of low-income housing, those are both areas in which I've been very actively involved, including 310,000 units per year replacement, and 385,000 units rehabilitation. That was the goal at that time.

Is there anything in the current report indicating to what extent we have moved toward those goals?

MS. DIEMER: Those numbers are -- you're saying 310,000 units and --

SENATOR PETRIS: Yes, 310 for construction and 385 for rehab.

MS. DIEMER: Okay. Those numbers sound to me like the numbers that are used frequently when discussing housing needs in the state of California. That is an overall statewide housing need for all types of housing, including low-income housing.

So, that is not just low-income housing needs in the state. In fact, I don't believe it's quantified anywhere in any report.

SENATOR PETRIS: What are the low-income needs as far as your Department has been able to determine?

MS. DIEMER: You -- it's difficult to quantify, but there are numbers such as 1 million units need to be rehabilitated, and that there are -- in the Homeless Report, we indicated 500,000 units are needed for affordable housing.

But it's -- the 310,000 that you're referring to is statewide --

SENATOR PETRIS: Total everything.

MS. DIEMER: -- annual units that need to be constructed, and as you know, housing has been good lately, and in fact I believe in 1986, the annual construction has hit almost 300,000. So a lot of the -- a lot of the building -- there's a building boom in many respects.

SENATOR PETRIS: But it doesn't cover the lower income people that I've been concerned and I think a lot of us have been concerned about.

What progress, if any, have you been able to chart in the current report on the lowest of the income levels?

MS. DIEMER: Well, we are not really -- we do have some numbers in the report that indicate the units that are produced. And again, you can't really dissect how many units are low-income, because we are looking at permit activity at the local level. So, we're looking at building permits.

But I don't want to act like I'm evading your questions. It sounds like you want to know what's happening in the arena of construction for low-income housing.

SENATOR PETRIS: Yes, and rehab too.

MS. DIEMER: Right, and rehabilitation.

SENATOR PETRIS: A lot of that is Department-sponsored, you know. It's funded --

MS. DIEMER: Right.

SENATOR PETRIS: -- by the state.

MS. DIEMER: We have a -- there are in CHFA, the California Housing Finance Agency, has $300 million in revenue bonds for the purpose of the low and moderate income households, and then the Department that I'm in, we have nearly $70 million that we spend annually for various programs in our Department. So, we are using dollars that we have in our budget just for what you're talking about.

SENATOR PETRIS: Can you translate that into number of units?

MS. DIEMER: I -- I could, and I'd like to be correct. If you'd like it at some other point, I'd be happy to supply it to you, but --

SENATOR PETRIS: If you don't mind.

MS. DIEMER: I don't have it with me.

SENATOR PETRIS: Okay. Is that in the annual report that the Agency makes to the Governor?

MS. DIEMER: Annual report that we, the Department, distributes would indicate how many units have been rehabilitated.

I didn't bring it with me, but we do -- we do track what our own programs do.

SENATOR PETRIS: Does this update of the 1982 thing cover housing and finance, or just your shop?

MS. DIEMER: No -- the Statewide Housing Plan?

SENATOR PETRIS: Yes.

MS. DIEMER: Yes, we do incorporate information from both CHFA and the Veterans Department that handles --

SENATOR PETRIS: That's everything.

MS. DIEMER: Yes, we try to get an administration perspective on what the administration should be doing in housing with all departments.

SENATOR PETRIS: Now with respect to the homeless --

MS. DIEMER: Yes.

SENATOR PETRIS: -- there's estimates ranging, I've heard everything from 100,000 to on up. Some people claim there's 100,000 in L.A. alone. I don't know what the actual figures are; maybe nobody knows.

What's the Department doing specifically to relieve that program?

MS. DIEMER: The Department, specifically, has 18 programs that address lower income housing in the state of California. So, that goes to the overall issue of the shortage of affordable housing in the state of California as one cause of homelessness.

As you know, there are several causes of homelessness, which include mentally ill people who have been released and are

out and are not being provided for, and there are alcohol and drug abusers out there.

But as far as our Department, we're responsible for providing lower income households. We have 18 programs that generally target all lower income households, and specifically we have 2 programs that we have continued to place in the trust fund that you authored and the Governor signed, the Housing Trust Fund, which is the Emergency Shelter Program. And we've expended roughly $18 million since 1983, and in another program, which I believe you authored, which is the Residential Hotel Program, and we've spent about $9 million since 1983. So, it's roughly $30 million since 1983 just in our programs alone.

SENATOR PETRIS: How many persons does that take care of?

MS. DIEMER: Again, I didn't bring those numbers with me, but we have it all documented, and it's justified everywhere as far as what we spend and what it does.

SENATOR PETRIS: I'm looking for some kind of dent in the load.

Senator Roberti's going to give you another opportunity in his bill, 800 million, which includes all of the programs you mentioned plus more. I'm sure you're familiar with that.

MS. DIEMER: Yes, I'm beginning --

SENATOR PETRIS: Has your Department taken a position on that?

MS. DIEMER: We have not taken a position yet because Senator Roberti introduced it in July, and there was the recess. We've come back now, and we are looking at it.

In fact, we've been working with your staff, Senator Roberti, on the bill. And as you know, we go through a review process where we go through the Governor's Office for a position.

SENATOR PETRIS: Does the Governor look to you for recommendations?

MS. DIEMER: I certainly hope so. That's what I view my role as.

SENATOR PETRIS: What is the present outlook? Does it look good to you?

MS. DIEMER: On that particular bill?

SENATOR PETRIS: Yes.

MS. DIEMER: I think that it addresses the needs. I think that it addresses the concern to have different financing options because we are strapped, as you know. There are many, many competing needs for the General Fund, but there are also other folk who want to use G.O. bonds for whatever they consider to be as priorities.

So, from a Department perspective, and as the Director, it is certainly something to look into. There are some problems with some of the programs that are being addressed in the bill, but again, we're working with your staff, Senator Roberti, on it.

It certainly is an option to look at as far as funding for housing.

But it's in many respects out of my control, because prioritizing G.O. bonds and looking at G.O. bonds is something the Governor personally does. But I will be involved.

SENATOR PETRIS: Do you think we need more housing?

MS. DIEMER: There's no question that we need affordable housing in the state of California.

SENATOR PETRIS: How do you see the role of the Department with respect to that problem?

MS. DIEMER: I see it working in conjunction with the Secretary of Business, Transportation and Housing, John Geoghegan, and advising the Governor on any and all issues having to do with that affordable housing topic.

And as a matter of fact, in July, I was -- I obtained a briefing with the Governor on housing issues, and sat down with him with John Geoghegan and some other people in the Governor's Office, and spent quite a while going through some housing issues with the Governor, and alerting him and advising him on what the issues are in California. And I see that as my role as the Director of the Department of Housing.

I also see it that it's my role to come forward with recommendations, which is the next step.

SENATOR PETRIS: That was my next question.

Do you see yourself as an advocate for a comprehensive overall housing program and an advocate for the Department?

I know that in these meetings, as you pointed out, there's prioritizing of the general obligation bonds; there's prioritizing of the General Fund. Anywhere you touch money there's a list of priorities, so everybody's scrambling --

MS. DIEMER: Yes.

SENATOR PETRIS: -- competing with each other, including people within the Cabinet, people within the Governor's staff, so you have to fight for space; don't you?

MS. DIEMER: Yes.

SENATOR PETRIS: My question is, are you doing that?

MS. DIEMER: Yes.

SENATOR PETRIS: Are you saying we need more housing in this state, here are the numbers?

MS. DIEMER: I'm looking at it two-fold. I think the first step is, yes, it's up to -- it's up to me as the Director with the support and endorsement of the Secretary of the Business, Transportation and Housing Agency, to -- to bear the burden of alerting the Governor to any issues associated with housing that the people in the state of California need to have addressed. It's up to me, with John Geoghegan, to point out these problems and to come up with recommendations, certainly in conjunction with the Legislature and with the constituents.

The second part of the role of the Director of Housing is to implement the policies of the Governor, so it's a two-fold role at this point.

SENATOR PETRIS: Yes, I understand that.

John Geoghegan was a resident of Alameda County before he came up here.

I'd like to report to him, and I intend to send him a copy, there was an article in the Oakland Tribune about two weeks ago on the latest survey of the homeless in Alameda County. And it's at the highest level in the history of the County, and a very high percentage involve women with children or entire families with children. There are more, and more, and more children being dumped into this homeless category in families

that do not have the drug-related or mental illness problems. It's just economic problems.

I don't know if that's been called to your attention; perhaps it has as the Director. Maybe somebody's told you about it.

MS. DIEMER: Yes, and in fact, Cliff Allenby, the Secretary of Health and Welfare, is technically the lead for the Governor on the homeless issue, and I am one of several department directors that he works with. And he has invited me, and we have participated in a number of tours of shelter sites all throughout the state. And we have talked with the people who are dealing with the homeless.

And yes, that is something that is being brought up, that they're seeing homeless families.

SENATOR PETRIS: Does the Governor have any initiatives of his own in the direction of supporting or requesting legislation on this homeless problem?

MS. DIEMER: Well, again, it's Cliff Allenby who is the lead on this, and I believe that --

SENATOR PETRIS: Is he your boss?

MS. DIEMER: Well, he is someone on this issue that I deal with, but John Geoghegan is my boss. I have two Cabinet members that I'm dealing with on different issues at this point, but it is John Geoghegan that I have the direct line of responsibility with.

SENATOR PETRIS: Let me ask you, I don't want to prolong this too much, but I think it's very important, Mr. Chairman.

CHAIRMAN ROBERTI: You're asking the questions I would ask anyway.

SENATOR PETRIS: Okay, fine. Thank you.

Another area of concern for me is the unfortunate timing in a number of events that have aggravated the homeless situation very substantially. I'm sure you're aware of it.

One is the very substantial reduction, if not total elimination, of any housing programs out of the federal government. For the last several years, it's just been pipeline stuff; nothing new. And gradually they're being wiped out, Section 8 and so forth.

That creates a tremendous shortage of housing.

Secondly, we have the efforts of 30 or 40 years ago now expiring in the form of federally assisted or subsidized in some way housing in which the owners are now turning to the free market, getting out from under, which they're entitled to do by law, and which have resulted in the last year or so in the loss of about 2200 units. The predictions are somewhere between 50-100,000 units in the next few years.

I've had legislation to try to help on that. I haven't been able to succeed too well.

What's the Governor's attitude on having some plan of the state, over and above the normal problems we've been talking about, to plug up these gaps with some state kind of action?

Can you help us on that?

MS. DIEMER: Yes, I can tell you that in the briefing that I had with the Governor in July, that issue was discussed

for quite a while. You're talking about 1960's federal government programs in which 20-year contracts are expiring. And that is a problem, and it's something that this Department has been highly involved with at the outset. In fact, you are quoting numbers that we came up with.

Yes, we're very interested in it. And in the Governor's briefing, I was expressly asked to come back to him with some sort of recommendations, whether they are legislative proposals, administrative actions, or budgetary proposals, but come back with recommendations on how we can preserve the existing housing stock.

So in my mind, he's telling me that that is a priority, and that he understands the issue.

SENATOR PETRIS: I had a bill a year or two ago that developed an alert warning system --

MS. DIEMER: Yes.

SENATOR PETRIS: -- in which there'd be some responsibility placed in the Department. Before your time, or at least before your current job.

MS. DIEMER: Yes.

SENATOR PETRIS: To take inventory and find out how many of these are expiring, when do they expire, what are the intentions of the owner, and alert public agencies who play a role in the housing field, have some responsibility at the local level.

MS. DIEMER: Right.

SENATOR PETRIS: The idea being to at least find out so that proper action could be taken.

It was vetoed on the ground the Department's going to do this anyway.

Well, there ain't nothing in the statute that requires the Department to do it. And my experience has been in the last few years, what they ain't required to do, they ain't gonna do. And a lot of things they are required to do, they ain't gonna do.

So, I'm a little perturbed about that veto, which simply said: Hey, let's have an alert system here to provide information. We didn't have to spend one dollar on housing; we didn't have to build anything; we didn't have to lend anybody any money. We just said: You other folks out there, we want you to know that in your community, these five programs are going to expire in the next 2-3 years, or three, whatever it is, and we'd like you to be aware of it and see what you might do to help alleviate the problem.

Now, are you actually doing this now?

MS. DIEMER: Yes, we -- we have been doing it, and we still are doing it, and have learned that it is -- it was, and I guess it's not so much a problem now to get the information, but last year when you had the bill, we had one person in our Department trying to get the information from HUD and Farmer's Home, and had learned that that information really was not regionalized so that you can pull out information on California, let alone within certain districts within California.

So, we realized that was going to be a burden, but made it a priority to track that information. It is staff-intensive for the person that's doing it. It's a huge computer breakout of these units that will convert, but we've done it, and we're still doing it because the momentum is still there on the issue. It certainly is still important, and Legislators, you and others, need the information because your constituents need to know this.

And I don't think there's any question, in fact I'd be surprised if someone is alleging that we are not providing the information still. It is certainly something that we are doing and still do.

SENATOR PETRIS: Now, to whom do you provide it?

MS. DIEMER: Anybody who asks for it. We will get the information. We have a system in place now where we provide information on where these units are and when they are subject to termination for the contracts.

And there are people in the Housing Committees, staff consultants and such, that are aware of this.

SENATOR PETRIS: Don't you send it out to all the local government agencies, whether they ask for it or not?

MS. DIEMER: Not routinely, but they're certainly -- they are aware that we have the information, and when they ask for it we give it to them.

SENATOR PETRIS: I would assume a lot of that comes from them in the first place. You ask a city how many programs do you have in your city, and they say: Well, we have this many. They usually keep track of that if they have a housing program.

MS. DIEMER: Possibly. It was the nonprofits that really had the problem getting the information because they're not in the loop, and they didn't the money or the staff time to do -- to devote to this.

So, you're right, we're probably providing it more to the nonprofits and other interested groups that just couldn't afford to look into it themselves.

SENATOR PETRIS: Thanks very much.

CHAIRMAN ROBERTI: Senator Ellis.

SENATOR ELLIS: Mr. President, I thought I had a question, but I think it's more or less developed into just a statement now, not directed at the person being confirmed.

But I think that to look at the overall picture and try to determine what is causing housing shortages and housing problems is really not the fault of the administration or Ms. Diemer or anybody in the Legislature.

I know Senator Petris has carried legislation, and we discussed it on the Floor the other day, in regards to this, and the problem is, the local communities who are insistent on having no growth in their communities. No growth means no houses. And those who insist on having rent control.

Both of those things put together automatically, first of all, impact the lower levels. The homeless go first; the low-income go second; the lower middle-income go next. And there's no way that you can have no housing growth and have rent control, stringent rent controls, and have low-income housing. You just can't do it unless you go in and the government builds the

houses, and then puts the people in them and runs it as a government operation.

You know, as we discussed on the Floor the other day, I think we we want to really have an impact, we can influence and legislate the agencies, sure. But I think really the thrust of this problem's going to have to be addressed through convincing somehow, either legislatively or in some means, the local communities in relaxing and making available housing to all the citizens.

That wasn't a question.

CHAIRMAN ROBERTI: Part of what you say, in my opinion, Senator, is correct, but part of it I don't agree with.

I just might add the other side of the coin, and that is when you have areas, like the Los Angeles area and the San Francisco area where there is no place to grow anymore, in my district you find more and more people, but I don't know where the building is. There is no place to grow.

You don't have the option of more housing. That is an option in many areas where you have, and that's why I put in the bonds issue, where you can create more housing, and we should do it. But in some areas, there is just no place to go unless you have the roads, the streets and the highways. And that leaves what housing there is at such a premium that if it isn't controlled, many of the people who live in those neighborhoods are forced out.

The elderly just can't move 30 or 40 miles to where the housing is being built, because all their connections, their

livelihood, is in an area, and to uproot them is almost to shorten their lives.

It's a very, very difficult question. I have never myself thought of rent control as a long-range solution to anything. It's a stopgap solution until we can find something better to do. But in some areas, especially the very, very dense urban areas, it's very difficult to come up with these solutions.

Rent control is no optimum thing, I agree on that.

Any other questions?

SENATOR ELLIS: Do you want some re-rebuttal?

CHAIRMAN ROBERTI: Please, please.

SENATOR ELLIS: Well, I can speak for my city because I was on the city council when we down-zoned the entire city. We had areas, older areas of the city, that the people themselves wanted to upgrade their communities. And they were denied it. And we went backwards instead of allowing for more units to be built, they down-zoned the area so that you'd have fewer. So, they created more problems right there.

And I know there's some older areas that under a good redevelopment plan, could provide more housing, not less, and provide housing at a lower cost.

And we have a bill running now, I'm carrying it, that allows, if you recall, kitchens and bathrooms and smaller square-foot units. Right now -- I forget what it is, 1200 feet, and we're going to allow them to go down to a thousand, I think it is. And they have a kitchen and a bathroom which will help, because then you can build more of those units at a lower cost, and people can get into them.

Thank you.

CHAIRMAN ROBERTI: Any other questions?

Is there any opposition in the audience?

SENATOR ELLIS: I'd move confirmation.

CHAIRMAN ROBERTI: Senator Ellis moves confirmation of Christine Diemer as the Director of the Department of Housing and Community Development.

Senator Petris, just one more question.

SENATOR PETRIS: I thought you going to pick up on a bunch of other questions.

Let me say I agree with Senator Ellis on the problems he described, and I agreed to amend my bill, thanks to your support, to at least hit the no growth area for sure.

I'm impressed to find out how many of those there are. I think there may be not quite as many as we fear, but one is too many in my book.

And that also speaks to the reason why we need a Statewide Housing Plan that takes care of each community's needs.

Let me just cover a couple of other areas. One is on farm labor housing, where I've also been active. We had a bill that was supposed to start in January of last year for rehabilitation of farm labor housing.

There hasn't been any money expended for actual housing. Maybe they're cranking up. Again, that's before you started.

Can you give us an update on that? Is that in your report that we just talked about earlier?

MS. DIEMER: I'd be happy to address that for you.

It's in the Statewide Housing Plan as far as a general topic of farm workers who are considered to be a group that needs to have assistance from the state.

But as far as the program that you're talking about, we have sent the NOFA out, which is the Notice of Funding Availability, which means I'm happy to report that we've had approval from the Office of Administrative Law on our regulations.

SENATOR PETRIS: How long did that take?

MS. DIEMER: It took a long time, and I can see that it took a long time. I have no -- I really have nothing to contribute as far as why it took a long time, but I can say --

SENATOR PETRIS: We're interested to hear, because we really worked over the other office head who had all kinds of excuses.

MS. DIEMER: Well, again, since I've been there, since last May, within a year there were public hearings. That means within a year, while I was there, regulations were drafted; comments were received; hearings were held, and regulations were submitted to the Office of Administrative Law.

Now, some -- some of those actions or activities were accomplished before I got there, but in the last year, we have -- it was very well known and became clear that these regulations were taking an undue amount of time. We made it a priority. They are done.

We are open for business. We have -- we have notified all of the growers in the state that they can come in and apply

for the money. Applications, we expect, will be received in September. We will review and rank them, and all the money will be expended come -- by the end of this year.

So, we are open for business and ready to go, and we've got $1.5 million. And I hope that everyone listening will come in and apply. We want to spend the money.

SENATOR PETRIS: There's been some problems with minority contracting within the Department. Some of the minority contractors who've applied for some of the housing projects have alleged that they've been arbitrarily rejected.

Are you on top of that now? Is there an improvement?

MS. DIEMER: Yes, we met with -- or, I met with the organization that's called M.A.P.A., which is the Mexican-American Political Association, because they had some similar concerns.

We met in May of this year, '87, and have met again with their representative and sat down with him with an action plan to assess whether there really is a problem, number one. And then number two, no matter what, let's market the programs and get more minority contractors involved with our programs. And we developed a brochure. We've got a sign-off from M.A.P.A. on this action plan, and I think we're working it out.

SENATOR PETRIS: I'm glad to hear that.

We've discussed a bunch of different problems and programs.

If I were to ask you to name your top three priorities for the coming year, as a person in your position of responsibility, what would they be?

MS. DIEMER: Well, the priority right now is to follow-up on the activities, the action items, that are a direct result of the briefing with the Governor in July on housing. So, we have begun meeting with nonprofit organizations in this state, public and private, and have begun meeting throughout the state with people who are involved in housing to follow up on what I consider to be five action items, to come through, and perhaps introduce something next year. It all depends on the review, again, by the Governor himself, to address many of the issues that you're addressing here today in this hearing.

So, that incorporates all three, and I've made it five priorities. There are five headings right now to put together.

SENATOR PETRIS: You have more than I offered, okay. Thank you very much.

MS. DIEMER: Thank you.

CHAIRMAN ROBERTI: Fine, thank you, Senator.

There's a motion before us. The Secretary will call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven. Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is four to nothing; confirmation is recommended to the Floor.

Congratulations.

We'll stand in recess for five minutes.

(Thereupon a brief recess was taken.)

SENATOR PETRIS: The meeting will be resumed by the unofficial nonofficial chairman, with the support of the two other Members of the quorum. We'll all go forward.

Let's go with Superintendent of the California State Prison at Kings County, Mr. Bernie J. Aispuro.

Please come forward.

MR. AISPURO: If I may make a correction, there is no "J" in there. There's a misspelled name.

SENATOR PETRIS: No middle initial "J"?

MR. AISPURO: No, it's "H".

SENATOR PETRIS: Okay.

The Chair always asks the question to tell us why you think you're qualified to hold this?

MR. AISPURO: Well, I've been with the Department of Corrections for 38 years, and this will be the seventh institution I've worked at. And up until February 28th, when I was officially appointed at Corcoran, I was Superintendent at Susanville for eight years.

SENATOR PETRIS: You're close to the pension, then?

MR. AISPURO: I think I went over it.

SENATOR PETRIS: You went past it?

MR. AISPURO: I think so.

SENATOR PETRIS: Any questions?

SENATOR ELLIS: Move the confirmation.

SENATOR PETRIS: I hear a motion for confirmation by Senator Ellis.

Call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven. Senator Roberti.

Three to zero.

SENATOR PETRIS: Three-zero; you're recommended for confirmation. Congratulations. It was a tough fight.

(Laughter.)

SENATOR PETRIS: The next one is Mr. Alfonso A. Gomez, Superintendent at Kings County, Avenal, California State Prison.

Can you answer the same question?

MR. GOMEZ: Yes, sir.

I'm a career Corrections employee of over 27 years of correctional experience. I have worked at seven different institutions, varying from different levels, from Level I through Level IV. Promoted through the ranks from Correctional Officer through my present position now.

I have been the Superintendent at the California State Prison in Avenal for the last nine months. And based on that, I feel I'm qualified to carry out the --

SENATOR PETRIS: Are you sure you want the job?

MR. GOMEZ: Sometimes doubtful, yes, sir.

SENATOR PETRIS: Sometimes you wonder?

MR. GOMEZ: Sometimes, yes, sir.

SENATOR PETRIS: Any questions?

SENATOR MELLO: Move it.

SENATOR PETRIS: Anyone here to speak for or against this nominee?

SENATOR ELLIS: Move the confirmation.

SENATOR PETRIS: I hear a motion. Senator Ellis moves confirmation be recommended.

Call the roll.

SECRETARY WEBB: Senator Mello moved.

SENATOR PETRIS: Senator Mello already moved.

You've got a double motion. Call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven. Senator Roberti.

Three to zero.

SENATOR PETRIS: Congratulations.

MR. GOMEZ: Thank you very much.

SENATOR PETRIS: The next vote will be on the Floor. Good luck.

MR. GOMEZ: Thank you very much.

SENATOR PETRIS: Mr. William A. Merkle, Superintendent, Susanville, California Correctional Center.

Mr. Merkle, do you want to tell us how many years you've been with the Department?

MR. MERKLE: I've been in the Department 30 years, working the line, management, administration at Soledad, San Quentin and currently Susanville. And half my time's been in management.

SENATOR PETRIS: And how long have you been in the present position?

MR. MERKLE: Oh, okay, yeah, I've been in the present position since November, 1986. And prior to that I was Chief Deputy Superintendent at Susanville.

SENATOR PETRIS: Any questions by any of the Members?

Does anyone here desire to testify for or against?

SENATOR ELLIS: Move the confirmation.

SENATOR PETRIS: I hear a motion. Confirmation has been moved.

Call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven. Senator Roberti.

Three to zero.

SENATOR PETRIS: Okay, we've moved confirmation three-zero. The next vote will be on the Floor. Looks like you'll be in good shape. Good luck.

MR. MERKLE: Thank you.

SENATOR PETRIS: Thank you for what you're doing up there.

SENATOR MELLO: We're waiting for the Director. That's the guy.

(Laughter.)

SENATOR PETRIS: Mr. John M. Ratelle, Richard J. Donovan Correctional Facility at Rock Mountain.

Who was Richard J. Donovan?

MR. RATELLE: He was a municipal court judge.

SENATOR PETRIS: I thought so.

MR. RATELLE: And an Assemblyman.

SENATOR PETRIS: Former Assemblyman.

You remember him, from your county.

SENATOR ELLIS: No, I don't remember him.

SENATOR PETRIS: He was before your time. I remember him because I've been here 100 years, so I remember them all.

I didn't realize there was a facility named after him. He carried a lot of legislation on crimes and corrections, and so forth.

Well, Mr. Ratelle, how long have you been Superintendent at Rock Mountain?

MR. RATELLE: I went down November -- September the 10th, 1985.

SENATOR PETRIS: And what do you have in your experience and background that qualifies you for this one?

MR. RATELLE: Well, I've been with the Department for 25 years, and I started as a Correctional Officer. Went up through the ranks, promoted through the ranks. It's been a lot of supervisory management positions. Opened the new facility at Vacaville and was the Chief Deputy Superintendent at the maximum security facility at Tehachapi, and opened it. And now opened the Richard J. Donovan.

SENATOR PETRIS: So you've been in a variety of them of different types?

MR. RATELLE: Yes, sir.

SENATOR PETRIS: Any questions? Senator Mello.

SENATOR MELLO: I was just looking at a clipping that came out of the paper recently, the Sacramento Bee, whereby it describes an officer at your facility. I guess a fight started in the yard, and this officer hollered a warning, but then she shot the inmate who was moving towards the fight.

No doubt you're familiar with that. It says:

> "The tower officer shouted two warnings through a bullhorn telling the third inmate to step back, O'Neill said. When the inmate continued toward the disturbance, the officer fired one round from an M-14 rifle. O'Neill said the tower

officers are instructed to shoot to disable."

MR. RATELLE: Yes, sir, that's correct.

SENATOR MELLO: If you shoot to disable, isn't there a warning shot or something? Why do you have to shoot somebody? I mean, when you go to disable, that could be fatal itself.

MR. RATELLE: The yard was full of inmates at the time. And the officer -- there was an inmate -- two inmates fighting. And an officer came over to break the fight up. And one of the inmates took -- got away, and the other inmate turned and started assaulting one of the correctional officers. He was beating him -- hitting him in the head.

The tower officer grabbed her weapon and moved out on to the roof of the building, hollered warning shouts. All the inmates laid down on the ground, which is what they're supposed to do. And then the inmate who was assaulting the officer, and the officer's back was to the inmate that was still standing up, and he started moving towards the officer and he was about four feet away when the officer shot. She tried to disable him. That's where she was shooting, low, and unfortunately shot him in the shoulder, the back of the shoulder.

SENATOR MELLO: Did this inmate have a gun or have any weapon at all?

MR. RATELLE: She -- she didn't know at the time. His back was to her, and he was moving to the back of the officer who was being assaulted by another inmate.

SENATOR MELLO: I'm not that familiar. I mean, I have tried to stay out of prisons as much as possible, other than to visit Soledad once in a while.

But it just seems kind of unusual for an officer to fire a shot where there's a fight. I think you'd make the assumption that the inmates do not have a gun or a weapon at that point, unless they smuggled them in or something.

It seems to me that, you know, shooting without using some other alternatives is sort of drastic action to take to put down a disturbance like this.

MR. RATELLE: I agree, it is a drastic action. However, the officers up in the tower saved lives of both staff and inmates. And at the time, one inmate was -- was pummeling another, or pummeling a correctional officer, and his back was to him. And another inmate, only four feet away from him, and she couldn't tell whether he may have had a knife or any sharpened instrument could have hurt the officer.

SENATOR MELLO: Do they ever take target practice?

MR. RATELLE: Yes, sir.

SENATOR MELLO: Well, I have a few guns. I go out and shoot. I don't do it too much anymore, but if you aim down at their feet and hit them in the shoulder, that's kind of not too good shooting.

MR. RATELLE: Well, the officers -- tower officers qualify every quarter, every three months. And this shot was 163 yards, shooting at an angle down towards the ground.

SENATOR MELLO: Yes.

SENATOR ELLIS: Did you say 163 yards?

MR. RATELLE: Yes, sir.

SECRETARY WEBB: Pretty good shooting. Might not have hit the guy at all from that distance.

SENATOR MELLO: Was there any investigation on your part on this incident?

MR. RATELLE: We -- normal procedure, we call the Sheriff's Department out and the Coroner's Office. The Sheriff is investing the incident, which is normal procedure at our institution, and the Coroner did an autopsy yesterday and will do an inquest, and then the final results go to the District Attorney, who will determine whether it was justifiable shooting.

SENATOR MELLO: It seems to me, just as a State Legislator, that we have to use reasonable care in something like this; otherwise, if someone's life's taken, perhaps needlessly, but secondly, it's a liability. We might get into a law suit, you know, for precipitously using -- even shooting to disable, I think, it depends on the situation, but I think that's an extreme position to take without using some other restraining alternatives, hopefully, so you wouldn't have to use this much force in order to stop an incident.

MR. RATELLE: I don't -- I don't disagree with you except that, you know, one officer out on the yard with over 200 inmates, being beaten, you know. You don't know if you wait, the officer could have died, you know, being beaten.

So, you know, it's a tough alternative for the tower officer. And we have procedures, and she followed them right to

the letter. She gave warnings. All the inmates heard the warnings; laid down on the ground like they're supposed to. And she fired for effect to disable.

Had she fired a warning shot into the ground, you never know if it hits a rock, it ricochets, you hit an innocent bystander. It's an impossible situation.

SENATOR MELLO: But shooting into the ground, that's why I'm saying I think shooting period, at the very, very last resort it might be justified.

I'm glad the Director's here also. I would like to see perhaps to Nancy Michel here, our staff person here in charge of appointments, to get a copy of whatever disposal of this incident is finally made, a final decision, just to see if this is -- what I'm concerned about, if this is our common practice, I think we might be looking at some very serious liability problems and perhaps doing things -- I think we're way beyond doing things like this in today's modern society, using this much force.

I don't know any more than what I just saw in these two paragraphs, but I just wanted to raise it because what caught my eye was the fact that tower officers are instructed to shoot to disable.

MR. RATELLE: Shoot to try to stop the incident.

SENATOR MELLO: Yes, but aren't they given some prior types of actions to take prior to the shooting?

MR. RATELLE: Like I said, she gave warnings. She gave warnings to cease and desist, and they didn't do that.

SENATOR MELLO: Okay, thank you.

SENATOR ELLIS: Move the confirmation.

SENATOR PETRIS: Does anyone here desire to testify for or against this nominee?

Okay, we have a motion.

Call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven. Senator Roberti.

CHAIRMAN ROBERTI: Roberti aye.

SECRETARY WEBB: Four to zero.

SENATOR PETRIS: Good timing. I have to run off to committee. I've been summoned to a committee. I'll be back.

CHAIRMAN ROBERTI: Confirmation is passed and recommended to the Floor.

Congratulations.

Next we have Ms. Charlene Mitchell, Member of the Board of Directors of the Hastings College of Law.

Ms. Mitchell, we'll ask you what we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position?

MS. MITCHELL: Senator Roberti, Senator Ellis and Senator Mello, thank you for this opportunity to appear before you on the matter of my confirmation before the -- for the Board of Directors at Hastings College of the Law.

I believe that I'm qualified to serve on the Board of Directors of Hastings because I believe that I have the background, interest, and energy to make a positive contribution to the quality and accessibility of legal education at Hastings in particular and in the state of California in general.

First and foremost, I'm a native Californian, born in San Francisco, and have attended every level of education in California. I received my J.D. from Hastings in 1977, where I graduated in the top 13 percent of my class.

While at Hastings, I competed for and was selected to serve as a student clerk at the California Supreme Court. During the 10 years in which I have been practicing law, I have found that the legal education which I received at Hastings has served me well. I am most appreciative of having had the opportunity to attend Hastings and view serving on the Board as a means of repaying an institution which has given me so much.

Moreover, as a graduate of Hastings, I have a personal interest in and a commitment to the continued excellence of legal education at that institution.

Following graduation from Hastings, I had a one-year clerkship at the California Court of Appeal where I served as a clerk for Division 3 and worked closely with three successive presiding justices of that Division. Then I worked for the San Francisco law firm of Petit and Martin in the real estate group. Two years later I joined the legal and government relations division of California First Bank, where I stayed for 6½ years, and earned the title of Vice President and Counsel.

Last April I joined the relatively new financial district law firm of Adams, Sadler and Hovis, where I continue to practice as a transactional attorney in my areas of expertise, which are real property, commercial law and banking.

While my experiences since attending law school have given me a solid legal and business background, my background prior to attending law school has been academic. I trained to be a professor of English at the college level. I have a B.A. from the University of California at Berkeley in English and a Master's Degree in English from the University of Montreal, where I specialized in Medieval and Renaissance drama.

As a lawyer, I have continued my interest in teaching by serving as a panelist for legal seminars, including those sponsored by California Continuing Education for the Bar and California Bankers Association.

I believe that it is important to contribute to the community in which one lives, and therefore have long been a volunteer of my services.

CHAIRMAN ROBERTI: You went to the University of Montreal? You must speak French.

MS. MITCHELL: I used to speak better French than I speak now, but yes, I do.

CHAIRMAN ROBERTI: I was there about three weeks ago, and it's a French-speaking campus, isn't it?

MS. MITCHELL: It is, and in order to graduate from there you have to pass a French proficiency test.

In terms of volunteering my services in the legal area, I have served on several State Bar committees, and have been very active for a number of years with Queen's Bench, including serving as its President last year. And I have also participated in legal services activities such as with the Legal Services for the Elderly.

In closing, I would like to note that in a free society such as ours, leadership is a gift conferred by those which one serves. As such, being in a position of leadership is both an honor and a privilege which carries with it a duty and a responsibility. One who is granted the privilege of serving on the Board of Directors of Hastings College of the Law is vested with a fiduciary duty to the Hastings community. That community includes not only the faculty, students and employees, but since Hastings is a state institution, all of the people of the state of California.

It is with this sense of privilege and duty that I have served on the Board since my appointment by the Governor last October, and with which the same send of duty and honor and privilege that I will continue to serve if confirmed.

Thank you.

CHAIRMAN ROBERTI: Very good and thank you also.

Let me ask you a question. There's been some controversy over alleged misappropriation of funds by Hastings for purchase of real estate and that money not being available for scholarships and things of that nature.

What would you do in the current situation? I think the Auditor General has indicated that Hastings doesn't plan to develop certain properties that it has for academic use. They're probably just holding them for investment purposes.

Do you have any comments on that situation?

MS. MITCHELL: Yes, it appears to be -- it was well before I was on the Board, but --

CHAIRMAN ROBERTI: I appreciate that.

MS. MITCHELL: We accept the fact that money which was given for scholarship purposes was used in part to purchase so-called West Block properties.

Not only has the Auditor General looked at that matter, but presently the Attorney General is investigating that matter, and the Board is working with the Attorney General to resolve that.

Most recently the figures have been gone over very carefully, and as I understand it, an agreement has been reached with the Attorney General as to the exact amount of money. I believe that figure is now $2.6 million that includes principle plus interest that needs to be repaid and used for scholarship purposes.

I think the entire Board, certainly I am, very committed to finding a way to return that money for scholarship purposes as soon as possible. That, of course, is a large sum of money, and the school doesn't have the assets without taking it from other areas to repay it in full right now, but there -- we're looking at all kinds of ways of financing, repaying that, which includes possibly selling the real property.

It's not clear right now whether the property will be developed or not. In fact, there are Board members who've been working on that for a long time to go forward and develop the property.

CHAIRMAN ROBERTI: Very good.

Any other questions of Ms. Mitchell?

Hearing none, do I hear a motion?

SENATOR ELLIS: Move the confirmation.

CHAIRMAN ROBERTI: Senator Ellis moves confirmation.

Is there any opposition in the audience? Support? Why don't you come up here, indicate who you are and who you represent.

MR. ABASCAL: Senators, my name is Ralph Abascal.

I ordinarily appear before the Legislature as a representative for California Rural Legal Assistance. I'm not here in that capacity.

I enjoy the honor of having been confirmed by this Committee. I am a Member of the Board of Directors of Hastings, have been so for the last six years, appointed by Governor Brown in 1981.

I want to be as brief as possible, but I think that the two candidates that you have before you are stellar candidates. And I hope, sincerely hope, that you will approve their confirmation. I think they have acted in the most responsible manner over the past period of time that they have served on the Board.

I really really hope for the opportunity to continue to serve the remaining six years of my term with them.

CHAIRMAN ROBERTI: Thank you very much for coming forward.

Senator Ellis' motion is before us. Secretary will call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven. Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is four to nothing; confirmation is recommended to the Floor.

Congratulations.

MS. MITCHELL: Thank you very much.

CHAIRMAN ROBERTI: Next is John A. Sproul, Member of the Board of Directors, Hastings College of the Law.

Mr. Sproul, we'll ask you the same question, and that is why you feel you're qualified to assume this position.

MR. SPROUL: Mr. Chairman and Members of the Committee, a brief word about my background.

I am a native Californian. I've lived here all my life, went to Berkeley schools, graduated from the University of California and went to the University of California Law School at Berkeley, graduated from there.

And then have spent most of my working life as an employee of Pacific Gas and Electric Company. First in the Company's law department for a number of years, thereafter on what might be called the gas side of the business. And I am now an Executive Vice President of PG&E.

My interest in the University is of somewhat long standing. I grew up on the campus. I lived there when my father was President. He was President of the University for 28 years, and so I have an interest in and a rather considerable devotion to the University.

It's -- I've reached a stage now in my career, I'm relatively close to retirement, so I will be able to spend a considerable amount of time on the affairs of Hastings. I look forward to doing that. I've served since last October when the Governor appointed me.

It's been a rather difficult year, as your question, Senator Roberti, indicated, but it's a -- I am, I believe, the first non-graduate of Hastings to ever serve on that Board. And so, that's a subject of some comment from my fellow Board Members, but they have learned to tolerate me, and I look forward to working with them in the years to come.

I think my background, both in the law and with respect to my business career, can add something to the college for the years to come.

CHAIRMAN ROBERTI: Thank you very much.

When did the Board first find out about the misappropriations?

MR. SPROUL: Well, the -- I can't nail down the precise date, sir, but certainly when I came on the Board, it was just at a time when the Auditor General's report was -- was being discussed and in full flower. And so, the Board really knew about this before I came on.

Certainly it's, I think, a number of years now that that's been known, but I think the current Board, as Charlene has said, is fully devoted and is going to see that the funds are returned. We have reached an agreement with the Attorney General as to what the proper amount should be. Those funds are going to be returned. They're going to be used for proper purposes.

We put -- we believe this Board has put the financial affairs of the college in better order than they've been for a considerable period of time, and so we think we're going to rectify the mistakes of the past, and that they won't happen again in the future.

CHAIRMAN ROBERTI: Very good.

Are there any other questions of Mr. Sproul? Senator Petris.

SENATOR PETRIS: Yes, in that connection, unfortunately I had to run off to the other committee so I wasn't here in time to ask the previous person so I'll ask you.

We're talking about those investments that were made out of the endowment --

MR. SPROUL: Yes, sir.

SENATOR PETRIS: -- and scholarship and all that.

MR. SPROUL: Yes, sir.

SENATOR PETRIS: Which together with interest and everything amounts to about $4 million.

MR. SPROUL: Well, Senator Petris, we've recently been working with the Attorney General who is conducting the investigation. And we've agreed with him on the figure. And I -- it's something in the neighborhood of $2.6 million. It's not quite four.

SENATOR PETRIS: Not four?

MR. SPROUL: It's not four.

SENATOR PETRIS: How is the Chairman of the Board selected? Is he elected by the other Members?

MR. SPROUL: Yes.

SENATOR PETRIS: How does he still serve when he's the one who was chairman of the Finance Committee that bungled this investment in the first place?

MR. SPROUL: Well, I'm not --

SENATOR PETRIS: I mean, shouldn't he be tossed out? Maybe you don't want to answer that.

MR. SPROUL: No, I -- I would prefer not to answer that question, Senator Petris. I'm not -- this goes back a long way.

SENATOR PETRIS: I know.

MR. SPROUL: I'm not trying to -- to excuse myself, but this was well before my time on the Board.

I can't say -- I can't say that I can tell you that he bungled or that he didn't bungle. Certainly some -- some mistakes were made about the use of those funds, and certainly the present Chairman was on the Board at that time.

SENATOR PETRIS: He wasn't just on the Board. He was chairman of the committee that made that decision. That's pretty heavy.

MR. SPROUL: But I have to say, sir, that my experience over the past year with Chairman Dobbs has been that he is as fully committed as are all the rest of us to the renewal -- to the repayment of those funds and for their use for the proper purposes.

SENATOR PETRIS: Were you there when he was elected Chair?

MR. SPROUL: No, sir.

SENATOR PETRIS: I wonder if he ran on a platform of good investments.

MR. SPROUL: I can't tell you that, sir.

SENATOR PETRIS: Okay, thank you.

CHAIRMAN ROBERTI: Any further questions?

Any opposition in the audience? Any support? Come on forward.

MR. ABASCAL: Again, Ralph Abascal, Member of the Board.

I did express support for both Mr. Sproul and Ms. Mitchell earlier.

Let me add something to clarify a couple of the questions that have been asked.

In 1979, an accounting firm advised the Board of these investments. At that time the Board adopted a resolution requiring the payment of 7 percent interest on the principle sum.

The Board was led to believe over seven or eight years that that 7 percent interest was being paid. It was not until just a few months ago that we discovered that the interest payments were not being paid; they were being accrued. Which is to say, each year, the 7 percent interest would be put on the books as a debt rather than an actual payment.

And that was action by the staff that we were unaware of as a Board.

SENATOR PETRIS: I don't think that's the issue. The issue is not how much interest comes in on that money. The issue is dipping into --

MR. ABASCAL: That was wrong; I agree.

SENATOR PETRIS: -- sacred endowment funds which were --

MR. ABASCAL: Absolutely, Senator.

SENATOR PETRIS: Now, the testimony apparently is that no student need has gone unmet.

MR. ABASCAL: That's not my testimony. That was the Dean's testimony.

SENATOR PETRIS: That's what I've heard, the answer, that they've still been able to take care of the students that needed financial help.

MR. ABASCAL: I don't agree with that statement. They have not.

SENATOR PETRIS: Well, I was going to say it doesn't seem very logical to me.

MR. ABASCAL: They have not.

SENATOR PETRIS: The issue that disturbs me is that the very person who headed up the committee, who decided to dip into these sacred funds that were not supposed to be used for that purpose, is now reigning as Chairman of the whole operation. It's a pat on the back for a job well done. I don't understand it.

MR. ABASCAL: I think it was an unsound investment when made, and I think that by accepting the responsibility of paying interest on it, just as if it were invested in something a little more liquid, like a money market where it could be liquidated quickly, that the school accepted the responsibility.

I was not appointed until 1981, so I can in a certain sense more freely accept blame for the original decision. But --

SENATOR PETRIS: Maybe it looked like a good idea at the time. I mean, the investment might have looked like a good idea, but the source was wrong.

MR. ABASCAL: Yeah, that was absolutely wrong, yes.

SENATOR PETRIS: That's like an attorney dipping into trust funds that belong to the clients to make a personal investment.

MR. ABASCAL: True.

It's been an unsound investment because it hasn't returned anything.

Now, there was an attempt to return. The Board took action and said we're going to pay interest on this. And then the staff did not fulfill that Board directive to pay interest.

CHAIRMAN ROBERTI: Why didn't they?

MR. ABASCAL: I don't know. I don't know, Senator.

CHAIRMAN ROBERTI: They've done what? They've entered it on the books as an --

MR. ABASCAL: As an accrual. So what it means is, you start with $1 million, and 7 percent interest is $70,000; and the next year then it's 7 percent of a million seven; and the next year it's seven percent of that plus that, and it winds up at $2.6 million. It's not a small piece of change.

If we have to, we'll sell the property and recover that 2.6 million. We hope that we'll be able to finance -- I mean, the property is worth a considerable amount of money, and we're in the process of trying to secure financing so that we can fulfill the responsibility to the scholarship funds as immediately as possible, both with respect to the prospective needs of students, that is the students that are there now, but we've also denied students scholarship money for the last eight or ten years. People who've gone through that institution had to borrow money.

CHAIRMAN ROBERTI: The property is in effect an account, and it's sort of an investment account for scholarship.

MR. ABASCAL: Yeah.

CHAIRMAN ROBERTI: But --

MR. ABASCAL: It's not returning anything.

CHAIRMAN ROBERTI: -- the scholarships haven't received anything.

MR. ABASCAL: No.

Now, in addition we've found just recently --

CHAIRMAN ROBERTI: How much is the property worth?

MR. ABASCAL: It may be worth as much as $10 million.

MR. SPROUL: Considerably more than 2.6 million.

MR. ABASCAL: We have just discovered within the last month and a half, I'm ashamed to say, because these ultimate responsibilities are ours. I mean, to say -- to blame staff is not a sufficient enough -- I mean, there are things going on in Washington now in which the person responsible cannot ultimately blame subordinates.

SENATOR PETRIS: Are they still around?

MR. ABASCAL: Yeah.

SENATOR PETRIS: The staff?

MR. ABASCAL: Some of them are not, yes, some of them are not. But we've just discovered within the past two months a million dollars' worth of scholarship money that has not been paid.

This is not money that's invested. This is money that could have and should have, and we will begin paying scholarships within the next month, but there's a million dollars' worth of scholarship money that's been sitting there that could have been given to students that hasn't been. It's been sitting there for years.

Now, just one thing. This Governor's appointees have been spending a great deal of time getting into these matters. And I'm proud of this Governor's appointees. We're spending an awful lot of time trying to straighten that institution out.

And there's -- I'm just highlighting a few of the problems, but that other million dollars is not invested in ill-liquid property. It's cash. And we should have been paying that money. There's people who're hurting who need that money.

We're going to start paying that, and we're going to do something about the other thing as well.

CHAIRMAN ROBERTI: Okay, thank you very much.

SENATOR PETRIS: Move confirmation.

CHAIRMAN ROBERTI: Senator Petris moves confirmation. Secretary will call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven. Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is three to nothing; confirmation is recommended to the Floor.

Congratulations.

MR. SPROUL: Thank you, sir.

(Thereupon this portion of the hearing before the Senate Rules Committee was terminated at approximately 4:40 P.M.)

--oo0oo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of August, 1987.

EVELYN MIZAK
Shorthand Reporter

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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

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ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 26, 1987

1:55 P.M.

Reported by:

Evelyn Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR JIM ELLIS

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR DAVID ROBERTI, Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

JAMES ROWLAND, Director
Department of Corrections

DAVE STIRLING, General Counsel
Agricultural Labor Relations Board

THOMAS E. WARRINER, Deputy Secretary
Health and Welfare Agency

BARRY CARMODY, Administrative Director
Division of Industrial Accidents

JIM WARE, Representative
National Association for the Advancement of Colored People

SHERMAN GRANCELL, Attorney
Former WCAB Referee

LESTER VOLCHOK, Judge
Workmens Compensation Appeals Board

CLAYTON ROBINS, Judge
Workmens Compensation Appeals Board

FRANCIS G. BURKE, Judge
Workmens Compensation Appeals Board

APPEARANCES (Continued)

JOE MARKEY, Advocate
California Self-Insurers Association

CARL BRAKENSIEK, Advocate
California Society of Industrial Medical & Surgery

ALLAN BURDICK
County Supervisors Association of California

ERNEST VIVAS, Counsel
Division of Industrial Accidents

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PROCEEDINGS

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VICE CHAIRMAN CRAVEN: I wanted to announce to those of you in the audience hearing the confirmations, particularly as it relates to Ms. Papadakis, that that item has been put over and will not be heard until a later time. I don't have any definite date on it. I can't say that it will be next week. Chances are it may trail for some time, but it has been done with her knowledge and with her consent.

Very well, we will take that position and move to the Governor's Appointees appearing today. I'm going to call first on James Rowland, Director of the Department of Corrections.

Mr. Rowland, if you would, please tell us why you feel you are qualified for this position.

MR. ROWLAND: Thank you, Senator and Members.

I've been in the justice system work for some 30 years. The last 20 has been in management and administration. I have worked at the county level in three different counties, and at the state level for about 15 years; the last 4½ years as Director of the California Youth Authority.

I've worked hard to develop meaningful programs for offenders and meaningful programs for victims. I'm past president, I'm proud to say, of the California Probation, Parole and Correctional Officers Association, and also past president of the national organization of Victim Assistance.

VICE CHAIRMAN CRAVEN: Very well, thank you, sir.

Is there anyone in the audience who wishes to speak relative to the confirmation of Mr. Rowland? Please come forward, state your name.

MR. WARE: Thank you, Mr. Chairman. My name is Jim Ware. I'm here representing the N.A.A.C.P.

On behalf of the N.A.A.C.P. we strong urge you to confirm Mr. Rowland. We feel that he's a strong candidate for this position. We feel he's sincere, he has the strength, and he certainly is the man for the job.

VICE CHAIRMAN CRAVEN: Thank you very much, Mr. Ware. We appreciate that.

Anyone else? Anyone in opposition? There appears to be none.

Any questions of the Committee? Senator Petris.

SENATOR PETRIS: Yes, Mr. Chairman, if I may.

We don't have time to go through everything. You've got a lot of problems to worry about.

VICE CHAIRMAN CRAVEN: Just cut it down to about 55 minutes.

SENATOR PETRIS: Thank you.

One area I'm concerned about, I've been getting some feedback on complaints, not against you, but about problems of some of the prisoners who have mental illness problems.

We don't seem to have a very clear-cut policy, and resources, and commitment to do something about it. I happened to see something on t.v. last night about another state where they pledge now -- their governor just signed a bill for $500

million just in mental health; it's a much smaller state than ours -- to separate prisoners who are mentally ill, and also separate those who are not convicts from the convicts and so forth so they can provide adequate treatment.

There are a couple of bills on that subject that are going through now. Are you familiar with them?

MR. ROWLAND: No, I am not, Senator.

SENATOR PETRIS: You're not?

MR. ROWLAND: No.

SENATOR PETRIS: Well, I think it would be a good idea for your to acquaint yourself with them because they do affect improving our program, which is just about nonexistent, I understand, for dealing with the problems of prison inmates, people who are violent but are also mentally ill.

Is there any plan at the present time in place relating to that problem?

MR. ROWLAND: We have had two discussions on that; a couple alternatives have been looked at. We have a meeting Monday of next week with the Director of the State Department of Mental Health.

It's a serious problem. I personally don't like the idea of putting them all in one prison or one institution. I like to have them as a part of a facility where there are various program options available to them, so as they proceed in their intervention or treatment efforts, they can be sent to existing program options where their behavior can be observed, and possibly they too can benefit from certain educational programs.

SENATOR PETRIS: Do we have options?

MR. ROWLAND: We have -- yes, there are prison industries; there are academic programs; there are vocational programs. Not as many as all of us would like to see, but there are those program options in several prisons.

SENATOR PETRIS: Well, they wouldn't all be helpful to one who's mentally ill, though.

MR. ROWLAND: No, that's right. They have to make some progress on their primary problem and then be tested in these other options.

There's pros and cons on specialization, or putting them all in one prison. There are -- there are numerous discussion going on, and those discussions will continue.

SENATOR PETRIS: With the mental health people?

MR. ROWLAND: Yes.

SENATOR PETRIS: What is your goal?

MR. ROWLAND: To certainly improve the delivery of services to those -- that category of offenders that need the help.

SENATOR PETRIS: Would that include physical segregation at some point?

MR. ROWLAND: Probably so.

SENATOR PETRIS: Would you favor a bill that would help you accomplish this?

MR. ROWLAND: Yes, I would.

SENATOR PETRIS: One of the bills that I inquired about, it would guarantee improved mental health care by establishing a

cooperative relationship with the Department of Mental Health, which is what you just said.

MR. ROWLAND: Yes.

SENATOR PETRIS: In fact, that's in the Appropriations Committee today. Maybe you ought to go up there and put in a word. That's AB 965. It passed the Assembly and it's, you know, in our House now.

And then the Senate Bill 331 creates a new licensure category called Correctional Treatment Center. And it requires the assessment and treatment of prisoners who are mentally ill, again in cooperation with the Department of Mental Health. I don't know where that is just now, but it's moving along somewhere.

Both of those seem to be in line generally with what you have in mind.

MR. ROWLAND: Yes, they do.

SENATOR PETRIS: It seem to me if it's established by legislation, it would give you more strength and encouragement and, perhaps, the resources to do it.

MR. ROWLAND: Yes.

SENATOR PETRIS: I would recommend you take a good look at that.

MR. ROWLAND: My chief deputy just informed me that the Department is in a support position.

SENATOR PETRIS: Yes.

How about medical care generally?

MR. ROWLAND: We're -- that has been a priority in the Department for quite some time. It's continuing to be a priority.

Just last week, our hospital with the California Institution for Men in Southern California became an accredited hospital, we've been so informed. Similar improvements are being made at Vacaville.

Medical care will continue to capture all of our attention in the administration.

SENATOR PETRIS: You know, in the popular literature, Sunday supplements and things of that sort, periodically we see articles about who really runs the prisons. The conclusion in those kinds of articles is that the gangs run the prisons, or at least have a tremendous amount of control over the conduct of the prisoners.

I suppose there's some truth to that in some of the institutions.

Do you have a program that you want to put in place that would help change that?

MR. ROWLAND: We -- we still feel that the staff, good professional staff, run and control the prisons. Without question, the prison gangs are influential and control or exert a lot of influence over individual inmates.

We are still communicating to staff and inmates that we're going to try the run the prison, try to minimize the impact the particular gang can have. They are a force and an influence.

Our only strategies will continue to be good information sharing, consistent dealing -- consistent firm, fair dealing with inmates. There's no one program that I know of that will break up prison gangs.

SENATOR PETRIS: Does it involve moving people around?

MR. ROWLAND: In some cases --

SENATOR PETRIS: Inmates?

MR. ROWLAND: -- it does, yes it does. We try to separate leadership.

SENATOR PETRIS: How about the work incentive program? How's that coming along?

MR. ROWLAND: It's coming along fine. Many, many inmates are participating. We'd like to see more job opportunities. That also will be a priority.

SENATOR PETRIS: What kind of credit do they get when they work on their time?

MR. ROWLAND: Fifty percent if they're involved in a job.

SENATOR PETRIS: That's over and above other reasons for reduction, like general good conduct and so forth?

MR. ROWLAND: No, that's not on top of that.

SENATOR PETRIS: That's not?

MR. ROWLAND: They can get up to.

SENATOR PETRIS: That's a maximum with all the programs combined?

MR. ROWLAND: That's my understanding.

SENATOR PETRIS: You can get up to 50 percent just in a work program alone?

MR. ROWLAND: Yes.

SENATOR PETRIS: Do you have a waiting list for that, or do you have a hard time getting them into it?

MR. ROWLAND: We do not have all inmates on a job assignment that would like to be on a job assignment.

SENATOR PETRIS: You don't have room for them, do you?

MR. ROWLAND: That's correct.

SENATOR PETRIS: So you do have a waiting list?

MR. ROWLAND: Yes, we do.

SENATOR PETRIS: Thank you.

MR. ROWLAND: Thank you.

VICE CHAIRMAN CRAVEN: Senator Ellis moves the confirmation of Mr. Rowland and recommends it to the Floor.

Call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

VICE CHAIRMAN CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

Three to zero.

MR. ROWLAND: Thank you very much.

VICE CHAIRMAN CRAVEN: Thank you.

SENATOR MELLO: Senator Mello aye.

SECRETARY WEBB: Four to zero.

VICE CHAIRMAN CRAVEN: As the spectators file out, let me call Dave Stirling, General Counsel, Agricultural Labor Relations Board.

Mr. Stirling, would you please state why you feel that you are qualified to continue in this position?

MR. STIRLING: Thank you, Mr. Chairman, Members.

It's been my privilege to be General Counsel of the Agricultural Labor Relations Board since January of 1983. Since that time we have come a long ways to making the agency fair, and evenhanded, and professional.

We have more improvement to make. We are set on doing that, but even with a cut of --

VICE CHAIRMAN CRAVEN: Close the door, please.

Excuse me, Mr. Stirling.

MR. STIRLING: Even with a cut of 54 percent that the agency has sustained in the last 4½ years, we have made great progress in reducing what had developed to be a major backlog. We have been very successful, more so than in any four-year period in the history of the agency, in collecting and distributing funds to farm workers and in doing the job that we are statutorily obligated to do.

And I pledge more of the same in the next period of time.

VICE CHAIRMAN CRAVEN: Very well.

Any questions of the Committee at this time?

Let's go to the audience. Is there anyone in the audience who wishes to testify on this matter involving Mr. Stirling's confirmation? There appears to be none.

Senator Petris.

SENATOR PETRIS: I'll pass.

VICE CHAIRMAN CRAVEN: Senator Mello.

SENATOR MELLO: There's two Democrats here and one Republican. This is a far cry and different hearing than we had four years ago.

MR. STIRLING: Three and a half years ago.

VICE CHAIRMAN CRAVEN: Well it only, if I may divest myself of my role here, perhaps points out the fact that you made a very wisdom-like decision the last time.

(Laughter.)

VICE CHAIRMAN CRAVEN: Please, Senator Mello, continue.

SENATOR MELLO: I would just like to move confirmation be recommended to the Floor.

VICE CHAIRMAN CRAVEN: Very well, Senator Mello moves confirmation of Mr. Stirling as General Counsel, Ag. Labor Relations Board.

Call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: No.

SECRETARY WEBB: Senator Craven.

VICE CHAIRMAN CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

Three to one.

VICE CHAIRMAN CRAVEN: The vote is three to one; confirmation is recommended to the Floor.

MR. STIRLING: Thank you very much.

VICE CHAIRMAN CRAVEN: Thank you.

Okay, let's take Mr. Warriner, Deputy Secretary of the Health and Welfare Agency.

I ask that he please tell us why he feels he's qualified for the position of Deputy Secretary?

MR. WARRINER: My name is Thomas Warriner.

I was born in Los Angeles County, educated at U.C.L.A.

After I got out of the Army, I went to work for the California Attorney General's Office. I've had 20 years of state service, most of it in the Attorney General's Office, doing work for the various departments that make up the Health and Welfare Agency.

In addition to that background, I was also for four years a member of the National Environmental Health Sciences Advisory Council, which is part of the National Institute of Health, and I also served for 14 months as the Deputy Director and Chief Counsel of the Department of Health, and I also served on the Governor's Commission on Child Support Enforcement and Development, and hope that these would qualify me for the matter that's being considered today.

VICE CHAIRMAN CRAVEN: Very good, Mr. Warriner.

Any questions of the Committee at this time? Senator Petris.

SENATOR PETRIS: First I want to thank you for the work on 873.

MR. WARRINER: Oh, I hope it was of help.

SENATOR PETRIS: A lot of help. I appreciate it.

MR. WARRINER: It's an interesting issue once you get the overlap of the two federal laws coming one after another.

SENATOR PETRIS: I just have a couple of questions. It has to do with the overall scope of your assignment within the Department.

MR. WARRINER: Yes, Senator.

SENATOR PETRIS: I guess, coming out of the A.G.'s Office, is that where you met the Governor?

MR. WARRINER: Yes, sir.

SENATOR PETRIS: Are you doing any legal advising in this job?

MR. WARRINER: Yes, sir.

SENATOR PETRIS: And with respect to the litigation, was it your position -- what position did you take on the interpretation of the statute? Did you take the limited one or the broad one?

MR. WARRINER: The position taken in the administration is consistent with advice that I concurred in. Actually the advice was given by the Health Department, but I concurred in that advice.

SENATOR PETRIS: The Health Department did it?

MR. WARRINER: Yes.

SENATOR PETRIS: Through their counsel?

MR. WARRINER: Yes.

SENATOR PETRIS: That wasn't your primary responsibility?

MR. WARRINER: No, sir.

SENATOR PETRIS: To analyze it legally and render an opinion.

MR. WARRINER: No, it was not, but I did do that as well. Obviously, it's pretty hard not to considering my background.

SENATOR PETRIS: Yes, I would think so.

MR. WARRINER: It's difficult to keep your hands off of some things like that.

SENATOR PETRIS: What's the status now of the 200 chemicals versus the 37? I know the case is on appeal. Is that going to be taken all the way up. And then if it is, what happens in the meantime?

MR. WARRINER: Well, let me approach by what's happened in the meantime.

The Science Advisory Panel has added a number of chemicals at their last meeting so that the list now is over 60, not 29, and on Friday they're considering an additional 45 chemicals, including alcohol as a reproductive toxicant.

So the list is continuing to grow while the litigation is also continuing.

SENATOR PETRIS: Are those additional chemicals included in that list of 201, which is being disputed?

MR. WARRINER: Some are and some are outside of that.

The dispute over the 200 versus the original list did not include the reproductive toxicants that we've added. The Court approved the list of reproductive toxicants.

In addition to the Court-approved list, the Science Advisory Panel has added several others, and of course we're considering alcohol, which was not part of the litigation.

They're -- you know, we're doing both.

SENATOR PETRIS: When that list is expanded, does that have to be submitted to the Court to get credit for it?

MR. WARRINER: No, we have it brought it to the -- if you put it that way, yes. We did, of course, bring it to the Court's attention. I think it bears on good faith of the administration.

SENATOR PETRIS: That's what I was talking about.

MR. WARRINER: I think there was a lot of -- a lot of feeling at the beginning that, you know, a situation was set up which was intended to circumvent the intent of the voters and not list the chemicals that needed to be listed.

That wasn't our intention. I think what we've done in the last several months demonstrates more than anything else that the Science Advisory Panel is confronting the issues of carcinogenisitic reproductive toxicity. Dealing with alcohol is a good example of that.

The chemicals that were not added, the three or four in the last meeting were not added, there were good scientific reasons that I think most people would agree with.

SENATOR PETRIS: Where does the Scientific Panel get its information? Do they do their own research? Do they survey the field?

MR. WARRINER: Well, we have -- the budget approved staff augmentations, so we have state scientists who collect the literature and the basic studies upon which the issue of carcinogenicity or reproductive toxicity turns.

SENATOR PETRIS: The state isn't doing its own tests?

MR. WARRINER: No, no, no.

What the Proposition requires us to do, basically, is to look at the existing research that's been done, and for the state's experts, in this case the Science Advisory Panel, determine that the particular chemical is known in the minds of the state's experts to be either a reproductive toxicant or a carcinogen.

So, they're basically reviewing the literature and applying their professional judgements to whether it's known or only suspected.

SENATOR PETRIS: Are there any that haven't had any research?

MR. WARRINER: Not so far. We're required, in addition to listing the known ones, to -- to issue in about a year a list of chemicals for which more research should be given. So, part of our process is to identify any -- I don't want to use the term

orphan chemicals, but they're chemicals that seem to be important to the Science Advisory Panel, but about which not enough is known to make the decision of whether they are carcinogens or reproductive toxicants. That's part of the Proposition.

SENATOR PETRIS: What's the policy on public access to information?

MR. WARRINER: All the information we have is available to the public.

SENATOR PETRIS: Which agencies are repository? Health and Welfare?

MR. WARRINER: Health and Welfare Agency is the official repository; however, we're depending on Health Services as well as scientists from Agriculture and other departments. So, we have the materials, but also the operating departments who provide the science backup have some of the materials.

SENATOR PETRIS: What's the process for providing the information? Is there a form filled out, or just a letter?

MR. WARRINER: Yes, we've dealt with most of them either by telephone calls or letters.

Obviously, most of the interest has been from environmental or business groups, and we've gotten letters, and we try to respond to them on that basis.

I haven't had any complaints about that, but they are -- it is all public records, I guess with the exception if there were some kind of confidential advice. But the science stuff that we're dealing with is materials that are in scientific journals.

SENATOR PETRIS: Now, as I understand the Proposition 65, it puts the burden of proof on the user that they're not using hazardous substances or toxics beyond the tolerable limit.

MR. WARRINER: That's one of the unique features of the Proposition, is the burden of proof.

SENATOR PETRIS: I understand the Department is trying to shift that with a different process.

MR. WARRINER: No, Senator.

SENATOR PETRIS: That's not true?

MR. WARRINER: No.

I think that came out of some question. We have a process that's provided in the regulations for a Safe Use Determination, where an individual or a company that has concerns with a particular listed chemical can apply to the state to look at whether this particular company or individual's use of the chemical exposes the public to a significant risk.

The state scientists give their opinion, but their opinion is like the opinion of anybody -- any other scientist. And specifically on our regulations, we make sure that that does not shift the burden. It doesn't come in as --

SENATOR PETRIS: If the matter comes up as an issue, the user still has to make the case?

MR. WARRINER: Right. But they could use as a piece of evidence what the opinion of the state scientist is, just as the opinion of any other scientist.

SENATOR PETRIS: But the state scientist's opinion isn't based on their own research. Again, it's based on their collection of the materials; isn't that right?

MR. WARRINER: Yes.

SENATOR PETRIS: Of other people's work.

MR. WARRINER: The Proposition doesn't really put the state in the business of doing basic research. That's -- I think that assumption is that that's done by the federal government, or by other people who are doing basic scientific research.

SENATOR PETRIS: So you're saying, under this SUDs process, the burden on the person using, or the company using the substance does not change?

MR. WARRINER: That's correct.

SENATOR PETRIS: So how do you regard that? Is that a screening process, or a preliminary determination, or what?

MR. WARRINER: Well, no one has asked for one yet. When we got into this, I know a lot more about the Proposition now than I knew when I got the assignment last January.

But all the way along, our feeling was that we needed to have predictability. Two things have to do with what we've done: one is a desire to bring predictability, because it isn't good for the people not to know what the rules are; and the second thing is to give science its proper role, you know, the Science Advisory Panel.

One of the ways we thought we would be able to help people know what the rules were would be to have a source that they could go to with questions about toxicity, and that's how we got into the Safe Use Determinations, SUDs process.

SENATOR PETRIS: Speaking of knowing the rules, when do you expect the regulations, final regulations, to be adopted?

MR. WARRINER: We have one group of regulations where we had the final public hearing last week. That's the first batch that sets out the basic interpretations and the structure for the implementation.

We have another batch, a guideline batch of regulations, that we've circulated for informal discussion. Hopefully, we'll be issuing those next month.

SENATOR PETRIS: Is that part of your duties?

MR. WARRINER: Yes, sir.

SENATOR PETRIS: Does that go through the OAL?

MR. WARRINER: Everything goes through OAL except the actual listing of the chemicals. The Proposition provides that the listing of the chemicals is exempted from the OAL process. The rest of the regulations are OAL -- are subject to OAL review, and you have to comply with the Administrative Procedures Act.

SENATOR PETRIS: Okay, thanks.

That's all under your duties too; isn't it?

MR. WARRINER: Yes, sir.

SENATOR PETRIS: All the regulations.

MR. WARRINER: Well, yes, I'm responsible for making sure that the files and materials -- I have people helping me, but it's my responsibility.

SENATOR PETRIS: Thank you.

VICE CHAIRMAN CRAVEN: Is there anyone in the audience who wishes to testify on the confirmation of Mr. Warriner? There appears to be none.

Senator Ellis moves confirmation to the Floor.

Call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

VICE CHAIRMAN CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

Four to zero.

VICE CHAIRMAN CRAVEN: Four to zero; confirmation's approved to the Floor.

MR. WARRINER: Thank you.

VICE CHAIRMAN CRAVEN: Next we have Mr. Barry Carmody, Administrative Director of the Division of Industrial Accidents.

Mr. Carmody, if you would do as the others have done and state why you feel you are qualified for the position for which you have been nominated.

MR. CARMODY: Mr. Chairman, Committee Members, my name is Barry Carmody.

I began my career with the state of California in 1969 as a traffic officer with the California Highway Patrol. In 1983, I transferred to the Department of Consumer Affairs, Division of Investigations, and was assigned to work as an investigator for the Board of Medical Examiners.

In late '74, I transferred to the Department of Industrial Relations, the Division of Labor Standards Enforcement, as a senior investigator. While working in the Division of Labor Standards Enforcement, I promoted through the ranks to the position of Assistant State Labor Commissioner.

As a result of my experience with the Division of Labor Standards Enforcement, I became keenly aware of the needs of California's working men, women and children. I worked in the fields of El Centro enforcing wage, hour and child labor laws, including California's compulsory Workers Compensation statute. I managed the San Diego office of the concentrated enforcement program during its first year of enforcement of the state minimum wage and overtime laws.

As Assistant State Labor Commissioner, I participated in a number of worker-oriented programs, including the Division's efforts to eliminate tax cheating in the construction industry and its commensurate adverse effects on workers.

In 1984, I was appointed by the Governor to the position of Chief of the Division of Labor Statistics and Research in the Department of Industrial Relations. In that position I pioneered the Department's move toward automation, including on-line case processing for the Division of Industrial Accidents.

In January of 1985, I was appointed Deputy Director of the Department. In January of '86, I was assigned as Acting Administrative Director of that Division, of the Division of Industrial Accidents, and in -- pardon me -- in September of 1986, I was appointed to that position full-time by the Governor

and served as Administrative Director effectively for the last 18 months.

For the last 10 years, I've managed worker protection and service programs in the Department of Industrial Relations. I've supervised a small district office, a regional program, a statewide program, and two divisions of the Department.

In my varied assignments, I've worked closely with workers in California's rich and diverse population, and I've developed respect and appreciation for their wants and needs.

I am honored that the Governor selected me to serve in this position.

VICE CHAIRMAN CRAVEN: Thank you, Mr. Carmody.

Senator Mello, do you have any comments or questions?

SENATOR MELLO: These are all letters in opposition to your confirmation, which come from many different individuals and groups that are concerned about what's happening.

Is yours a reappointment?

MR. CARMODY: No, this is a new appointment, Senator.

SENATOR MELLO: Well, we have a real crisis, as you probably know.

What is your opinion about the Division of Industrial Relations currently? Do you think there's problems as far as Workers Compensation and the administration of it?

MR. CARMODY: Well, I think the Division is under good leadership. I think we're doing an exemplary job in handling the workload as it comes down.

As far as the Workers Compensation system in the state, I think from an employer's perspective and an employee perspective, it's a disaster.

SENATOR MELLO: It you say we're doing an exemplary job, I have special interest. I represent the Monterey Bay area, and we have had serious backlogs. We've had a shortage of judges up until about four years ago, when I was able to help get another administrative law judge down there.

But now they're short of clerical support staff, and really, when you say exemplary service, I think this has been a mess. That's my concern.

I guess in evaluating your qualifications, it's as to whether or not you're committed to straightening it out and helping to improve it, or just keep the status quo or let it get worse.

MR. CARMODY: I think I'm committed to improving it. I think there's no question about that.

Since I've been there, we've increased the number of disposition on cases by 20 percent over last year. I've hired -- I've hired 15 judges. I now have what I would consider in the last five years the lowest vacancy rate in judges. I only have five vacancies.

SENATOR MELLO: But what is the backlog now? How long does it take to get a case --

MR. CARMODY: In the Long Beach office of the Division, it takes two weeks to get a hearing. In the Santa Monica office, it takes seven months. We're suffering from local rules and

local problems. We have some local managers that are not excited about implementing the board rules as promulgated in 1981, and we have others that have taken up the charge and have implemented those rules. We have some local management problems that have to be resolved, and we're doing that.

SENATOR MELLO: Can't you fire those people that are not doing their job right?

MR. CARMODY: I've done some of that.

SENATOR MELLO: But it seems to me, if they have a seven-month delay, you see, the experience I'm reciting to you is, my office gets more calls from injured workers who come from an injury into the hospital, and suddenly there's a lot of bills and the bill collectors start coming, and they don't know what to do. So they call me, of all people, their Senator. Because usually when I get a call, or any Legislator, it's because the system has not responded, and they have to go to somebody that's elected. And sure, we're there to help serve them and so forth.

But if the system was responding adequately to the injured workers, and helping to process what their rights are, then you wouldn't have a seven-month delay because you wouldn't have all of these hassles right now.

Plus, no the other side of it, employers in California, they want reforms for Workers Comp because they are paying the highest rate in the country. The injured worker is getting the lowest rate.

I'm not saying this is part of your responsibility, but I'm just showing.

So, all of the providers in between, once they get their cut, plus the delays, I think we have not an exemplary system. I think we have a lousy system that has to be improved or done away with, or move it into the private sector somehow, or do something with it.

I think it's awful to have an injured person sit there, come home with their injuries, loss of income, and what they're facing are the bill collectors.

There ought to be a way in which the Department would help. The minute the injury occurs, they would start processing his application, get things in order, and then once the processing begins, then allow in an orderly manner so that the injured worker would start getting the benefits without losing their homes, without going through the kind of red tape.

I might have to find just to show and get on the record that we do have letters. I've gotten calls from other judges from around the state who oppose your appointment mainly because the judges are now overworked, there are too many administrative goof-ups, lack of sufficient support staff. I said that earlier.

Here's a letter from the California Council of Police and Sheriffs which says:

> "Director Carmody has done nothing in light of this report, in which it was the opinion of the Planning Team that the principle cause of the growing backlog of cases and the deterioration in the quality

of work was primarily due to in-
adequate staffing."

Here's a copy of that report. So they say:

"We oppose the confirmation of
Barry Carmody as Director of the
Division of Industrial Accidents."

Here's a photograph that is of -- well, my office sometimes looks bad, but it doesn't look quite as bad as that, but it shows about two or three feet high of mail in somebody's office.

Here's the report that's marked "Confidential" but that's somehow being distributed. It's the preliminary report of the DIA Planning Team Report on Workers Compensation Judge Staffing and Workload Standards.

Are you familiar with that?

MR. CARMODY: Yes, I am.

SENATOR MELLO: What do you think about it?

MR. CARMODY: Well, the report, from my perspective, was flawed. It studied --

SENATOR MELLO: It was what?

MR. CARMODY: It was flawed. It studied two rural offices, Salinas and Fresno, and said that those offices seemed to be adequately staffed and were handling 85 cases per judge per month.

It did not look at the larger officers, such as L.A., Santa Ana, Oakland, Santa Monica, Van Nuys.

If you review that report in light of the Auditor General's reports in 1982 and '84, you see that the Auditor General looked at the major offices in the Division with respect to their workload, how they were staffed, and how productive they were. And the Auditor General reached a conclusion in those two reports that stated: If we were to double-calendar judges, if we were to reduce the number of continuances and orders to take off calendar, we would achieve an equivalent saving in judge time equal to the addition of 33 positions in the Division.

SENATOR MELLO: Included here is a chart that shows from 1953 on up to 1984. It shows three lines: one is the hearings per judge, the top line; decisions per judge; and new filings per judge. The line started here, and I guess if the number of judges were increased adequately per caseload, these lines would be fairly flat. But it shows it going from 450 up to 1500, which is almost a 400 percent increase in hearings per judge, decisions per judge and new filings per judge over a period of the last 30 years, from '53 to '84.

Do you take exception to that?

MR. CARMODY: On, no. I think those statistics are correct. I think we have had an increase in numbers of filings of 300 percent.

SENATOR MELLO: How about hearings?

MR. CARMODY: The hearings have increased dramatically, too. Just in the last year, I think our hearings were up over, oh, about 35 percent in the number of hearings and conferences.

SENATOR MELLO: The top line is the hearings per judge. You probably can't see this too well. The second one is the decisions per judge.

But even in the last 10 years -- Leon, would you be kind enough to hand him this chart? He's probably familiar with it.

MR. CARMODY: Thank you.

SENATOR MELLO: Here's a letter from Barbara Burke from Southern Pasadena:

> "Please do not confirm the Governor's appointment of Barry Carmody to the position of Administrative Director of the Division of Industrial Accidents."

She goes on, and mainly it's the delays in the processing of claims, unnecessary expenses of costs, and she closes by saying:

> "Appointed officials also take an oath to uphold the Constitution and must be held accountable ..."

And on and on.

That was Barbara Burke. Well, Francis Burke -- looks like the Burkes are not on your side this time.

MR. CARMODY: That's correct.

SENATOR MELLO: Do you know the Burkes?

MR. CARMODY: Yes, they're two judges in the Workers Compensation system.

SENATOR MELLO: Here's a strong letter from them. Here's a letter from the law offices of Donald Haynes complaining about the procedures followed by you.

I don't want to take time going through this whole thing, but here's another one from the Conference of California Workers Compensation Judges, and that is signed by Joanne Andrews as President of the Conference of California Workers Compensation Judges. They are, again, referring to the report and they say:

> "The problems expressed in the report still exist, and that is, nothing seems to be improving in that we just don't have enough judges, we don't have enough support staff, and there's excessive delays."

My main concern is the delays in due process to the injured worker. If it takes more people to get the job done, I think we ought to do it.

I've been in business myself all my life, and I'm angered as an employer and a business person. Many times I've had to help my injured worker financially to help him through the process until they start to get some response from Workers Comp. I don't have all the businesses that I had before, but a major cost to me was Workers Compensation. I still pay into the fund.

So, with this kind of opposition, we've been approving people here to serve in this capacity, and nothing has changed.

And believe me, I'm not saying this about Governor Deukmejian's administration. I was critical of Jerry Brown's administration as well. They went down hill quite a bit while he was governor.

But I think California has to -- I mean, here we are with great pride. We are a big leading state in a lot of things, high tech and so forth, and yet if you're hurt here, we have the highest incidence per thousand employees, or per 100,000 based on when OSHA was being done away with, which is another complete problem. We do have a high accident rate in California, and yet we have a very slow response time to these injured workers.

You're going to be a major person in that, administering this program. I'm looking to you to say are we going to straighten this thing out or not.

MR. CARMODY: I think we are. I've already made a number of changes that I believe will expedite the process.

Some of the criticism I received from some of the judges are my hard rules on work ethics. I require people to come to work at eight and stay 'til five.

I've been investigated by the Auditor General, one of my offices. Found out that three of the clerks were actually taking one day a week off to have their hair down, their nails polished, and to shop at Macy's.

Those kinds of things are not rampant, but they do exist. And I'm deadly against those because they adversely affect the opening of the mail; they adversely affect the, you know, the resolution of disputes and the expedition -- expediting cases.

I've -- I've leaned on the judges from the standpoint of continuances and orders to take off calendar. I believe this is one of the biggest wastes of times that our system experiences.

And as a result, we now are moving cases faster, but there are still pockets out there of problems.

For example, we have two offices in the L.A. Basin that are not more than 20 miles apart. One office can give you a hearing in two weeks, the other takes seven months. One office doesn't have any delays in the processing of the mail. The other office has 650 inches of mail. I have a task force down there right today, working to clean up the mail problem, and our Division receives a lot of mail. We receive anywheres from 25-50 feet throughout the entire Division a day. So, if it gets behind, it can really exacerbate the process.

And I think we --

SENATOR MELLO: Let's go back to this person that had their hair done and their nails polished while on state time?

MR. CARMODY: Yes, sir.

SENATOR MELLO: Did you turn that over to the district attorney's office?

MR. CARMODY: No, the Auditor General turned it over to me, and I've disciplined the individual.

SENATOR MELLO: Isn't that stealing or fraud when they do that, anybody, man or woman?

MR. CARMODY: Well, I believe it is.

SENATOR MELLO: It seems to me that's an administrative problem. Anybody who's unauthorized who takes time off on my staff, I would fire them right now. Wouldn't hesitate five seconds.

MR. CARMODY: Well, they have civil service rights, Senator, and we're moving ahead --

SENATOR MELLO: But civil service doesn't allow them to take off a day and get paid for it while they're doing personal things.

MR. CARMODY: I couldn't agree with you more.

SENATOR MELLO: In fact, I don't even let staff take sick leave when they're not sick. A sick leave is for being sick.

MR. CARMODY: You and I agree on a lot of things.

SENATOR MELLO: Well, we agree on a lot of things, the only thing is, the amount of reports I'm getting from this program -- and you're not the first one. I go back to Mr. Rinaldi and all the other people that have been appointed there -- to me, I'm playing the record over and over again and nothing is happening. Things are getting worse instead of better.

People like yourself make a good pitch before the Committee and you start off by saying you've done an exemplary job, and now when I start getting more details, there's a lot of room for improvement.

So, we're sort of agreed to some extent that we have to change the system and improve it, but then once you get confirmed by the Rules Committee and the Floor, then you're confirmed. There's nothing we can do about it if you fail to live up to what you say here and what's on tape, or what we have here in the record. We have no power to go back and say: Ah-ha, you didn't do what you said you were going to do.

MR. CARMODY: Senator, you can be assured that I'll live up to my word.

SENATOR MELLO: Many people have said that here, too, believe me. I don't want to read you back all the punched holes on the tape, but I think on the unprocessed mail, it you measure your mail in inches, and that the backlog has been significantly growing over 240 precinct in the last nine months total; total statewide of 2,751 inches or almost 230 feet.

Is that how it stacks up high?

MR. CARMODY: Well, the mail comes in in our district offices anywheres from one to five feet a day, depending upon on whether it's a slow or high mail day, and we measure it by the inch, how soon the clerks can get to it.

SENATOR MELLO: Do you stack the letters up on top of one another and measure the thickness?

MR. CARMODY: Well, we lay it out and do measure it by the inch.

In a couple of our offices, in the L.A. Basin, we've had some problems with clerical staff vacancies, maternity leaves, and some disabilities.

We are addressing that currently with the task force in the office with the most horrendous backlog. We've cleaned that backlog up. That program will end on Friday, and we're going to move to another office to do the same thing.

What we find when we go into those office, what causes the mail, is that there is a reluctance of local management to stay on top of the problem. If you go to Santa Barbara, if a

clerk is sick, or when the mail starts building up, the judges come out of their offices, roll up their sleeves, and jump in. It's a team effort, and get the mail opened.

SENATOR MELLO: You mean the judges are opening mail?

MR. CARMODY: In Santa Barbara, when a problem occurs, we all jump in and open the mail.

SENATOR MELLO: I think that is outrageous.

MR. CARMODY: Well, I do, too. But sometimes you've got to pitch in, you know, to move the mail. And it solves the problem in the immediacy of it.

In the particular office where we have a major problem currently, we've had four vacancies. We've tried to fill those vacancies. We had three people come to work; they lasted a week and left. It's very difficult, sometimes, in the L.A. Basin to recruit staff. And we do our best and the process takes time, but we do our best.

SENATOR MELLO: The regional managers of these regional office, who do they answer to?

MR. CARMODY: Presiding judges answer to me through an assistant chief.

SENATOR MELLO: What about the administrators?

MR. CARMODY: We have none. I have 22 presiding judges.

SENATOR MELLO: It seems to me, what I can't figure out, do these different offices have the ability to function by their own, or do you or others on your level have jurisdiction over what happens in these regional offices?

MR. CARMODY: I have ultimate responsibility and jurisdiction over the district offices. The presiding judge has the immediate responsibility of the day-to-day activities.

SENATOR MELLO: It seems to me, and I'm talking here as a business person, somebody's missing the boat as far as administratively getting the job done so that the effort flows to the people that you're serving.

You have, through your acknowledgement, judges opening mail, with a backlog measured in feet, 230 feet; it's increased 240 percent in the last nine months. You say you can't get staff.

We have people looking for jobs all over the place.

I really think, you know, that you're taking the brunt of a lot of frustrations I have, and I'm just saying that they're being directed to you. They're being directed at the whole department and the whole system. I think it's greatly flawed in California. And for some reason, we aren't able to get a system that's responsive enough to get the job done.

This should be a high priority when workers are injured on their jobs covered by Workers Compensation. They should have a fast track ability to get their claims processed, get a settlement. It's so disruptive, depending upon their injury, with sometimes retraining where they can't go back to the original work; where their income stops; house payments; rent; their family. Everything that's involved. It's just critical.

And a lot of people are being placed in jeopardy by what I've come to realize is a very poor system.

Okay, thank you, Mr. Chairman.

VICE CHAIRMAN CRAVEN: You're welcome.

Senator Ellis.

SENATOR ELLIS: You need to walk me through the procedure. When a worker's injured, what happens?

MR. CARMODY: Well, he would notify his employer of the injury. The employer, hopefully, would notify the insurance carrier, and the insurance carrier would provide benefits to the injured worker to the degree that he needs medical treatment; if he's off the job, temporary disability payments of any amount, whatever kind of arrangement that particular worker has with the employer for the payment of those benefits.

We get involved when a dispute arises between the injured worker --

SENATOR ELLIS: Let's stop right there.

Do we know how many injuries we have per year?

MR. CARMODY: I think that the last year that I have data for, as I recall, is about 463,000 disabling injuries annually.

SENATOR ELLIS: How many are handled by the insurance company and you don't get involved?

MR. CARMODY: Well, we had 186,000 applications filed last year. We'd have to presume that those that didn't file had no dispute with their carrier or employer over the nature and extent of the injuries.

SENATOR ELLIS: So, 277,000 were handled without the Department getting involved.

MR. CARMODY: That's correct.

SENATOR ELLIS: And 186,000 did get within your system.

MR. CARMODY: Have been filed with us; that's correct.

SENATOR ELLIS: And of the 186,000, how many are handled administratively, if that's the way you do it, routinely?

MR. CARMODY: All of them.

SENATOR ELLIS: No, do the judges see 186,000?

MR. CARMODY: Oh, no, no, no. Many of those are resolved or withdrawn. I would say the judges would see in a year approximately 100,000 of those, either in a compromise and release settlement form or in a hearing trial form.

SENATOR ELLIS: Okay, 100,000 -- well, 86,000 are handled administratively, can I use that term?

MR. CARMODY: Well, they've either withdrawn from the system or they carry over for a number of years, depending upon the nature and extent of the disability.

SENATOR ELLIS: They're not disposed of then?

MR. CARMODY: Well, some of them are withdrawn. No action occurs on the application. The application is filed a year later, nothing happened, and they stay open in the system until we have what we call a review process, where judges will go through and issues notices of intention to dismiss on no action, and nothing happens on the case and it's closed.

SENATOR ELLIS: All right. So then we get down to 100,000 cases a year that actually go to a judge?

MR. CARMODY: That are reviewed by a judge, yes. That'd be my estimation. I don't have any statistics with me right now, but that's approximation; correct.

SENATOR ELLIS: And you have 22 offices?

MR. CARMODY: Correct.

SENATOR ELLIS: And you have how many judges?

MR. CARMODY: We have 134.5.

SENATOR ELLIS: That's 134.5?

MR. CARMODY: Correct; Mrs. Burke is in a half-time position.

SENATOR ELLIS: Okay. How many is that per judge, 136?

MR. CARMODY: It's 1,000 or 1200; something like that.

SENATOR ELLIS: Well, it's 100 a year.

MR. CARMODY: No.

SENATOR ELLIS: A thousand a year?

MR. CARMODY: About 1200.

SENATOR ELLIS: About 800-900 a year per judge. Now, that's the average.

Do some judges do more than others?

MR. CARMODY: Yes, some judges do more.

SENATOR ELLIS: What would be a high and a low?

MR. CARMODY: Oh, a high would probably 1500; a low would be 300.

SENATOR ELLIS: Why would you have a difference of 1200?

MR. CARMODY: Two reasons: could be the regional area in which the judge is assigned; it could be the calendar procedure and the manner in which the work is dispensed by the presiding judge.

Some offices double-calendar judges, and the workload on a given judge is greater than it would be in other offices. An example --

SENATOR ELLIS: Are there requirements? Do they have to produce so many a day or a year?

MR. CARMODY: Currently we have no workload requirements, no.

SENATOR ELLIS: If, say, some office takes eight months and one takes two weeks. The one that takes seven months, there's got to be something wrong there unless they are having an extraordinary number of cases that's referred to them.

MR. CARMODY: Well, initially what it's showing to us is that they have a calendar that's an abomination. The calendar process is such that it encourages delays and it encourages lost time.

It was achieved or derived after a number of years of making special considerations, trying to accommodate the needs of the local bar or the local office. And as a result, the calendar has run away with itself, and we're not moving cases in a timely fashion.

We have changed that calendar in that office as a result of this workload situation we're dealing with. Effective January 1, because of the cases that have been scheduled so far out, we're going to change the calendar and go back to the traditional calendar and reduce that time delay in that office.

SENATOR ELLIS: Now, are you doing that, or is the presiding judge doing that?

MR. CARMODY: I'm doing that.

SENATOR ELLIS: You had to go in and do it?

MR. CARMODY: Yes, sir.

SENATOR ELLIS: Did you fire the judge?

MR. CARMODY: No, sir.

SENATOR ELLIS: Why not?

MR. CARMODY: I haven't got to that stage yet.

SENATOR ELLIS: Well, I would have fired him first, then I would have started to work on cleaning up the calendar.

MR. CARMODY: Well, I appreciate --

SENATOR ELLIS: I'm a business person, too, by the way.

MR. CARMODY: I appreciate what you're saying, but we need to -- I think we need some training in the Division in the worst way. I've made some requests this time around for some monies to do some training.

We have some people that are highly efficient and others that are not. We need to find out what the differences between those that are highly efficient and those that are not; managers that are successful and those that are not.

We take presiding judges from the ranks of our judges. They're trained to be attorneys; they're trained to be advocates; they're trained to do an excellent job in the courtroom in the litigation arena. They're not trained as managers.

I don't know of any major training program in our Division over the years -- Senator Mello's been aware of the problem -- and over the years that I've worked with DIR, where a major training program on how to manage a district office has taken place. And I think a lot of our problems are management-oriented. It's clear.

SENATOR ELLIS: Well, maybe we need to add some sort of a position that is like an office manager.

MR. CARMODY: We've talked of that, too, a local office administrator that would be responsible for the calendar. Take it out of the hands of the judges.

SENATOR ELLIS: Because, no criticism on judges, but some doctors, physicians, sometimes, are not adaptable to some things. I hear sometimes they're not too good at office managing, too, and they always hire somebody to do it for them.

MR. CARMODY: That's correct.

SENATOR ELLIS: It seems like a judge, maybe some people, that maybe is a classification of professionalism they would lack, some managerial techniques. I don't think that's a criticism. That's just the way it is.

MR. CARMODY: That's correct.

SENATOR ELLIS: But, are the judges, do they have any sort of civil service system?

MR. CARMODY: Yes, they're all civil service.

SENATOR ELLIS: Regular judges aren't civil service; are they? Is a municipal judge?

SENATOR PETRIS: You mean their clerks?

SENATOR ELLIS: No, the judges themselves. No, they're not under civil service.

How come yours are under civil service?

SENATOR PETRIS: They're different. They work for a state agency.

SENATOR ELLIS: Maybe we should take them out of civil service and that would help.

MR. CARMODY: I wouldn't recommend that.

SENATOR ELLIS: I hate to ask questions and run, but I've got to go to another committee.

VICE CHAIRMAN CRAVEN: That's all right. We've got a lot of people in the audience who'd like to say a few words.

Are there individuals in the audience who would like to testify on this?

If you would, please, come forward, state your name and affiliation and make your statement either pro or con.

MR. GRANCELL: Thank you.

My name is Sherman Grancell. I served as a referee, they now call them Workers Compensation Judges, of the Industrial Accident Commission and the Workers Compensation Appeals Board from 1947 to 1963, and as Deputy Commissioner of the Workers Compensation Appeals Board from 1963 to 1966.

Since then I have represented self-insured employers and insurance carriers in matters before the WCAB. Our law firm of Grancell, Grancell and Marshall has 30 attorneys and five offices in Southern California.

We do not take political positions, and my speaking here today should not be considered as a political statement.

The efficient and timely delivery of Workers Compensation benefits cannot be considered a political issue, since there must be unanimous agreement that the system must work at its optimal capacity.

Unfortunately for all of the participants in the systems -- the employees, employers, insurance carriers, attorneys, and the WCAB -- the entity responsible for ultimately resolving the inevitable disputes has deteriorated to the point where it is de facto impossible to bring a case to trial before some judges at some boards.

Why has this occurred? As defense attorneys, our information is limited to what we can observe. Some of the factors are that some boards are understaffed as to judicial, secretarial and clerical positions. Some people at all levels at some of the boards do not work to capacity, and generally the system is antiquated, both as to management and technology.

In my 40 years of experience in Workers Compensation, I have been in close contact with every Chairman of the Industrial Accident Commission and WCAB who administered the system before Tom Saunders, the first Administrative Director in 1965. And I have been involved with every Administrative Director since 1965.

In my opinion, Barry Carmody has demonstrated the ability to identify many of the problems. And what is more important, develop and implement programs to solve these problems. He has improved uniformity of procedure by eliminating many local rules previously established by some boards. He has reduced delays in the issuance of decisions, and he has filled vacancies with additional Workers Compensation judges and support staff.

We believe that Barry Carmody has shown that he has the ability and is willing to exercise it as an outstanding Administrative Director and should be confirmed in that office.

Let me add a couple of points because these were raised, particularly by Senator Mello.

In the first place, Barry Carmody, as acting and as the appointive Administrative Director, has been in this position for 18 months. He inherited the system at that time, 18 months ago, as it was. Delays, and there are abundant delays, are not for the benefit of either the applicants or the defendants. As far as the self-insured employers and the insurance companies are concerned, if they are stuck with months of delays, it means that they're having to pay additional compensation before there's a decision by a Workers Compensation judge.

The staff clearly is inadequate to handle the tremendous increase in volume. I believe that Mr. Carmody said we now have 137 Workers Compensation judges. When I left the system in 1966, I think we had 120.

There have been many attempts to get an increase in the budget in order to be able to hire more judges and more staff. But those have failed.

In addition, there have been some very unfortunate administrative decisions made by, well, one Administrative Director in the past, several years go, permitted or issued a new rule permitting the applicants' attorneys to file their applications before any board desired by them.

The result of that immediately was that the applicants' attorneys immediately starting throwing all their applications before certain boards where they considered that the judges were quite liberal. The effect of that was to force a closure of the

Inglewood office. It flooded Santa Monica and Van Nuys, where they didn't have adequate staff, didn't have adequate space, and Santa Monica and Van Nuys have never been able to catch up with the problems that were presented at that time.

Thank you very much, gentlemen.

VICE CHAIRMAN CRAVEN: Thank you, Mr. Grancell.

Yes, Senator Mello.

SENATOR MELLO: Mr. Chairman, if I may respond.

You were somewhat, I think, critical of some of the statements I was making.

You said that there were attempts to get additional judges in the budget but that failed.

MR. GRANCELL: Yes.

SENATOR MELLO: As I recall, we in the Legislature augmented the budget to provide for more judges, but it got vetoed out by the Governor of the State of California.

Is that correct or not?

MR. GRANCELL: That's my understanding. I'm not saying it's the fault of you.

SENATOR MELLO: You said it failed. You mentioned getting it in the budget failed. That would be the Legislature's fault.

We got it in the budget. It was the administration that failed.

MR. GRANCELL: Yes.

SENATOR MELLO: Secondly, you said he's been there 18 months, and things are progressing well based on what you just

said. But the fact that the mail increased over the last nine months by 240 percent, the backlog of mail increased by 240 percent, and you have judges opening up the mail.

Is that the kind of administration we want in California?

MR. GRANCELL: Well, in the first place, I am not certain that any -- that the mail in any particular office increased by 240 percent.

In the second place, frankly Mr. Carmody mentioned the example in Santa Barbara. No, I don't think it should be necessary for judges to have to use their time to open mail.

But on the other hand, if the office is backed up to such an extent, I don't see any big objection to the fact that judges might be willing to pitch to help to do the job. I think I did that myself once upon a time.

And I don't mean to be critical of your statements, Senator Mello. As a matter of fact, I think that the faults that you see with the system are there. I don't dispute that at all.

SENATOR MELLO: Thank you.

VICE CHAIRMAN CRAVEN: Thank you very much.

Anyone else wish to testify?

This gentleman is going to speak in opposition.

MR. VOLCHOK: My name is Lester Volchok. I am a Workers Compensation judge. I am a member of the Board of Governors of the Conference of California Workmens Compensation Judges, and I am an officer of the Conference.

But I am not here today as a representative of the Conference because the Conference felt, through its Board of Governors, that it might be considered inappropriate to oppose the confirmation of the head of the agency which has supervisorial power over its membership.

However, I believe that as a person charged by statute and oath, and with trial level judicial responsibilities in Workmens Compensation matters, I have an obligation to come forth personally and offer evidence particularly relevant to the issue of whether this appointee has demonstrated during the past 19 or 20 months, not 18 months, the qualifications to hold the high office he aspires to.

The Budget Act passed in 1985 expressed legislative intent that the Division of Industrial Relations evaluate management and staffing changes necessary statewide and district level in order to expedite the processing of Workers Compensation cases.

January 23rd, 1986, a Planning Team of six presiding Workers Compensation judges and one Workers Compensation judge submitted the report on Workers Compensation Judge Staffing and Workload Standards to Mr. Carmody, who was then acting Administrative Director of the Division of Industrial Accidents, having been newly appointed.

Mr. Carmody was advised in the cover letter that the Planning Team awaits your further instructions. As of March 25th, 1987, there had been no detectable action to address the concerns of the Planning Team regarding the inadequate

staffing, which the Team characterized as a primary cause of building backlog and deterioration in the quality of the work.

It should be noted that the report of the Team not only analyzed the problems addressed, but also did an extensive analysis of the cause of the problems and made specific recommendations towards eliminating the problem.

One of the recommendations was that the guideline for determining the number of Workers Compensation judges needed to properly carry out the mandate of the Appeals Board should be based on the number of new filings per month per judge. That number was set by the Planning Team at 85.

This compares to a standard established in the 1960s, when Mr. Grancell was a referee, which set the number at 50 new filings per judge per month. And in the 1960s, the cases were not as complicated, nor did we have the numbers of issues that we are faced with today.

I might add that Mr. Carmody incorrectly characterized that his 85 cases per month per judge to hear. Those are the new filings. We don't hear 85 cases per month. My calendar runs is based on the number of hours per week. It's 24 hours per week of hearing time. And I have a calendar set for September, during which I have 15 cases set for a rating conference calendar in the afternoon between the hours of 1:30 and 4:30. Broken down into the time, that gives me 12 minutes per case; 12 minutes per case.

During that period of time, I will see a minimum, if everybody shows up, of 30 attorneys, each with a different position, because if they had similar positions, they wouldn't be there.

SENATOR MELLO: What office?

MR. VOLCHOK: Van Nuys, sir.

On March 25th of 1987, Joanne Andrews, who's the President of our Conference, wrote Mr. Carmody to inquire what actions had been taken or contemplated with respect to implementing the recommendation of the Planning Team.

On April 3rd, 1987, Mr. Carmody responded to Judge Andrews' letter and stated that it was important to keep the effects of the Gann spending limit in mind when discussing the Planning Team's recommendations on staffing.

Earlier he told you he took no action on that recommendation because it was flawed.

He stated no changes, no prospective changes, nothing, in a direct response as to what could be done to implement the staffing shortages.

Please note, in a February, 1986 meeting, Mr. Carmody had with the officers of our association, at which I was present, Mr. Carmody stated unequivocably that Mr. Rinaldi, the Director of the Department, had stated that the policy of the administration is no relief until there is meaningful reform.

That's another reason we don't have staffing, because there's no reform.

Robert Benjamin, who is Mr. Carmody's immediate predecessor in office, in an interview in December, 1985, just before his retirement, stated:

> "Since the employer community wants reform, it is clear that there will

be no additional money resources to improve the operation of the DIA until reform arrives."

Again, later in 1986, in the Fall, right after Mr. Carmody's formal appointment as Director and not acting Director, at another meeting with the officers of the Conference, Mr. Carmody repeated the policy of the administration: no relief until reform.

It can be readily seen that Mr. Carmody did not create the problems addressed in the report or referred to by Mr. Benjamin. He inherited them. He simply, since assuming office, has sidestepped them.

During the past 20 months, he has done nothing to implement the policy except the policy of no relief until there's reform, which has been dictated by Mr. Rinaldi.

Let me demonstrate this. The Planning Team reported in -- as of July, August and September in 1985, 113 judges on staff. New filings came in at the rate of 131.75 new cases per month per judge. Based on the last statistical report released by Mr. Carmody, which is the quarter report ending June, 1987, covering the months of April, May and June, there were 116 judges on staff. Mr. Carmody earlier testified that he had 134.5 judges, and these were all hired during the last month or two. New filings came in at the rate of 135.33 new cases per judge per month.

The importance of these figures is that the Planning Team's opinion is that the primary cause of the backlog and the

deterioration in the quality of the work was due to inadequate staffing and was clearly recognized over two and a half years ago when the Planning Team made the report. Nothing has been done to rectify this situation.

But that's not all. Let me tell you something else about the report. The Team reported that 121.5 requests for hearings, commonly called DORs, for Declaration of Readiness to proceed, were received per Workers Compensation judge per month for the same period in 1985. For the months April, May and June, 1987, the number of Declarations of Readiness to Proceed per judge was reported on the official report as 2,669 per judge.

Can you believe this? I can't, because I know better. But those are the statistics released by the Department. That came from the Administrative Director's office.

Realistically, though, for the period January, February and March, 1987, that quarter, the number of Declarations of Readiness per judge per month was 127.33.

What do these numbers mean? It means that the situation was and is status quo, and the reason for it is, is there any money in the budget: The Legislature has appropriated the money. The Governor has vetoed it. The lack of funds due to Gann spending, the lack of funds due to other reasons are probably contributory, but the real reason is there's no plan, there is no desire to improve.

And why is this? Because it is our opinion, or my opinion, I should say because I'm speaking for myself, that the administration is out to destroy the system as it exists. It's

really not that the system can't function; it's that it's not being permitted to function.

Our Constitution provides that laws be passed by the Legislature and implemented by the Executive. In the past several years, the will of the people has been expressed through the Legislature in its acceptance of the retention of the system as it exists because all attempts at reform have been turned down.

I take no position on reform. The people vote; the Legislature passes. The Executive is supposed to implement it. We are part of the executive branch. We are not being permitted to implement it.

The executive branch, through Mr. Rinaldi and Mr. Carmody, has deliberately starved the system over the past few years by refusing to adequately staff the WCAB with judges and support personnel,to adequately equip the local offices with modern equipment and state-of-the-art technology, to permit a court system, which is what this really is, it's a court system, to function efficiently or to even provide facilities in which the public, who we are supposed to serve, can have confidence that they are in a court where their rights can be properly adjudicated and preserved.

In Van Nuys, the office that I sit, it took two years for the Division of Industrial Accidents to provide American and California State flags in the courtrooms. This was in a brand-new building that we moved into. Every other agency in the building had new flags prominently displayed from the day the building opened in 1984, but we had no flags in the courtrooms.

Three years later, almost three years later, we still don't have clocks in the courtroom, but they're on order.

VICE CHAIRMAN CRAVEN: Have what?

MR. VOLCHOK: Clocks. You know, the judge in the courtroom should have a clock so he can keep track of time as to how long these people estimate their trial should take, how much time he allows for people to present evidence and so forth.

You have to look at your watch or ask the reporter.

VICE CHAIRMAN CRAVEN: Did you ever think of looking at your wrist?

MR. VOLCHOK: I have a watch that sets an alarm so that I can allow the hour, then it goes off.

SENATOR MELLO: Should be 12 minutes, and that's it.

VICE CHAIRMAN CRAVEN: By the time you get the flags, we'll have another star.

(Laughter.)

MR. VOLCHOK: Well, we got the flags now, Senator. We got the flags. It took two years to get them.

VICE CHAIRMAN CRAVEN: But the bear was lying down.

(Laughter.)

MR. VOLCHOK: Mr. Carmody should be the executor of the program prescribed by the people through its elected representatives. He's not the executor; he's the executioner. And he has demonstrated that he's the executioner.

Last year, Mr. Carmody was the subject of an interview in the November, 1986 California Workmens Compensation Inquirer, which is a magazine, a trade magazine; it's a trade publication.

When asked if he had formulated some opinions as to emergency matters which he thought needed immediate addressed, his response was that he wouldn't categorize it as emergency measures. Quote:

> "I have some ideas I would like to explore with respect to changes in the organization."

Getting into detail, the interviewer asked: How is the staffing situation throughout the state now, both in the judicial area and in the clerical area? He response neither referred to nor showed the vaguest awareness of the Planning Team report, or any of the problems that I have described.

Mr. Carmody has, since assuming the office of Director of the Division of Industrial Accidents, demonstrated a great talent for avoiding a direct response to the reason the backlogs which cause delay in service to the public and the deterioration of the work. He spoke to one group and blamed the problems on, quote, "judges who come in at ten o'clock in the morning and go home at three o'clock in the afternoon."

Well, I've been a judge now since -- with this agency since 1981. And I don't know anybody that can come in at ten o'clock in the morning and go home at three o'clock in the afternoon. Perhaps there is one, and one should be spoken to, or whatever disciplinary action taken. That's not the usual case in Van Nuys.

He told another group: The problem is, the judges spend too much time in trial. They should stimulate and concentrate on effecting more settlements.

I agree with him wholeheartedly. That's part of the job of being a judge. Anybody that's a lawyer knows that. Cases are better off when they're settled than when they're tried, but we do have people that want to try the cases, and if they have to be tried, they have to be tried.

In an interview with CAAMANTS, C-A-A-M-A-N-T-S, which is an organ of the Conference of Applicants' Attorneys, in June, 1987, just two months ago, he was asked the question: Why are there problems and delays in getting trial dates in certain areas? And the answer was: When I go down and personally look into files, and I find that both the defense and applicant attorneys have requested the judge to hear the case, and the judge continues the matter for what I consider no good cause, then I think the problem is internal not external, especially when there's a letter in the file from the applicant's attorney saying "Will you please hear my case," and the defense attorney concurs, but the judge says "Go out in the hall and see if you guys can settle it."

There are an undue number of continuances. It's easy for someone in my position to blame one side or the other, but come on. Judges are paid to try cases, and you better believe it because we try them. We try them whenever we can try them.

It's interesting to note that in all the time Mr. Carmody's been in office, he's never been in Van Nuys. I don't know about the other district offices, but he's never visited our office. Every other Administrative Director before this that I know had paid visits to the local offices to find out what's

going on and how it's being conducted. So, he's never looked into the files in our office.

He said, "Sometimes I think judges forget what they are supposed to do or what they are there to do." This is in the same CAAMANTS interview. He said, "Now why do they forget that? Because they are overwhelmed by the workload." And we are, but we do the work because that's what we're paid to do.

Recently, on August 19th to be exact, Mr. Carmody testified before the Little Hoover Commission. At that time he told them there were 122 judges actively in the system. That only last week.

In response to the question: What efforts has your Department made to change or amend Workers Compensation procedures and benefits in recent years? He stated, among other things in his answer, that audits are conducted as needed of a Workers Compensation judge's caseload based on complaints to the Administrative Director about decisions, timeliness of decisions, or overall case management. He emphasized that these audits resulted in disciplinary action taken against five judges with an additional action pending.

I have no quarrel with disciplinary action taken if the conduct of the judge, or the actions of the judge, or the lack of work produce requires it. But I don't know that disciplinary action is an accomplishment. I'm not sure that that's an accomplishment. I think it's a fact, but it's certainly not an accomplishment that benefits the Workers Compensation system.

Another part of his answer referred to training programs. Part of this -- but this program was apparently aimed at the public, and it's to be commended that the DIA has the facilities, and time, and the money, and the personnel to put on a training program. At least that's the purpose and content.

What about training for the WCAB personnel in relevant, topical issues connected with their work? As judges, we get none.

The Supreme Court has described us as a special court of limited jurisdiction. Those of you who are lawyers know that continuing education is a must if you're going to practice your profession. Judges even more so. Continuing education is a must. A judge must be aware of the current case law; a judge must be aware of the current decisions; a judge must be aware of all the statutory changes as they occur. A judge should even be aware of regulations that are adopted or passed by the Administrative Director's office.

Flying up here on the plane today -- no, I think it was when I was picked up when we got off the plane -- I became aware of the first time that the standards for psychiatric evaluation have been changed by the Administrator Director's office, and that there's a seminar being put on by the Medical Association, to which I could be invited so I can become familiar with it. But in our office in Van Nuys, we haven't had that word yet. These were adopted on August the 1st.

However, we attend at our own expense, including travel and lodging, seminars and programs which we sponsor at the State

Bar meeting. We attend other programs put on by legal and medical associations at our own expense for lodging and travel. The only thing we get is some administrative time off. We get two days off to go to the State Bar. We get one day off to go to the Applicants Association Training Seminar once a year. One day off to go to the Defense Attorneys Association Training Seminar once a year.

In conclusion, let me state that I know that other court systems, one I'm particularly familiar with is the Superior Court in Los Angeles County, have been beset with administrative problems due to budgets and caseloads. I presume there are persons with experience and expertise in management of court systems, because that's what is needed, who can make substantial meaningful recommendations even within the constraints of the Gann spending limit.

We judges are certainly willing to provide whatever input is needed to that end. I am aware of efforts to reform Workers Compensation. Some of our judges have varying viewpoints on that point, but as judges, we are not part of the debate.

My concern is, and the other judges' concern is, is that the judicial officers of the Workers Compensation system should be able to work under circumstances which facilitate rather than hinder the compliance with the oath we took to support the Constitution of California, which in Article XIV, Section 4, requires that the administration of Workers Compensation legislation accomplish substantial justice in all cases judiciously, inexpensively, and without encumbrance of any character.

The Senate, which you represent, is mandated to confirm or deny this appointment. I urge you -- I don't urge you, I implore you to advise the Governor and Mr. Rinaldi that the time has come to comply with the law, to implement and carry out the will of the people as expressed by its elected representatives, to administer the present system so that it does accomplish substantial justice expeditiously.

We can do this, and you could do this, by withholding your consent to this appointment. If reform is needed, let reform take the usual channels, which should not be done by regulation or by the withholding and failure to comply with the laws of the State of California.

Thank you very much for your kind attention.

VICE CHAIRMAN CRAVEN: Thank you, sir.

Senator Ellis has a question.

SENATOR ELLIS: Workload seems to be part of the problem, and we heard where some offices are two weeks behind and some seven months.

How is Van Nuys?

MR. VOLCHOK: Van Nuys is approximately, generally speaking, from the date of conference -- that's something I should explain to you, Senator. You said before, "Take me through the procedure," to Mr. Carmody.

Let me walk you through another portion of the procedure.

Ordinarily at the first Declaration of Readiness to proceed, the matter is set for a conference hearing. And those

are statistics that are generally reported. However, at the conference hearing, if the case is not settled, then the matter is set for trial.

In Van Nuys today, if a matter came before us for conference, for conference, then the trial would be set next June, 1988.

SENATOR ELLIS: So, you're even more than seven months.

MR. VOLCHOK: More than seven months.

SENATOR ELLIS: So your office is worse.

MR. VOLCHOK: I don't know how much worse it is. I have nothing to compare it to except what statistics are put out by the Administrator's office.

Also, what doesn't appear in the statistics are the time limitations in trial. A trial does not take a quarter day, a half day, or a day. And those are the way they're figured. That's close. A quarter day is two hours; a half day is four hours; a full day is a full day.

Ordinarily, if we're calendared and we are over-calendared, and I can understand why we're over-calendared. It's because not all the cases go to trial. Consequently, there should be backups.

But what happens is, when you do it that way, and without anything being done to implement it -- God knows we've asked them to try to effect a change because the judges don't control the calendaring. That's done by a clerical staff, completely divorced from us. The best we can do is send the attorneys out to the clerical staff to get a trial date, and then comes back to the judge, and the judge knows the trial date.

SENATOR ELLIS: We're running out of time.

MR. VOLCHOK: What I'm trying to point out --

SENATOR ELLIS: Let me say one thing else --

MR. VOLCHOK: All right.

SENATOR ELLIS: You answered my question.

MR. VOLCHOK: Yes, I know. I'm just the judge; you're the Senator.

SENATOR ELLIS: You're nine months behind; that was my question.

In your particular office, I mean your courtroom, or whatever you call it, how many cases do you personally handle a month or a year, or however --

MR. VOLCHOK: Well, that's what I was trying to say, it depends on the time of the cases. We are calendared for 24 hours per week. They have a formula for figuring up the number of hours a week that you're calendared for.

SENATOR ELLIS: But how many cases?

MR. VOLCHOK: Well, sometimes it's eight cases a week; sometimes six -- I mean a day. Sometimes it's only four a day.

SENATOR ELLIS: So, you would do 600-700 a year?

MR. VOLCHOK: Oh, closer to 1,000 a year.

SENATOR ELLIS: Okay, a thousand.

Now, is there any time limits on how long you have? Do they say, okay, you get this case, and it's got to be out in a week, or anything like that?

MR. VOLCHOK: Yes, there are time limits.

The Labor Code provides specifically two different time limits. The first one is Section 5313 of the Code provides that a case must be decided within 30 days after it's submitted.

The second limitation is that the case has to be decided within 90 days after it's submitted or else the judge doesn't get paid.

Two separate sections of the Labor Code.

SENATOR ELLIS: That's the incentive, huh?

MR. VOLCHOK: That's the incentive.

SENATOR ELLIS: Then how do we get up to nine months?

MR. VOLCHOK: That's nine months to trial, not nine months to getting a decision out.

SENATOR ELLIS: Say something extraordinary happens and you need a continuance, or you need more time --

MR. VOLCHOK: That's what I was going to tell you a moment ago, Senator.

If I tried a case today, and we put two hours of trial in, or three hours of trial in, and we were not through, and it's five o'clock, or 5:15, and you have to close up, then it will not be finished until sometime next May or June. That's the way the system operates.

It's not good, God knows. When I was in civil practice, I never -- I never encountered that in civil courts in this state or in the federal courts in this state. You started a trial; you finished it.

But we can't do that.

SENATOR ELLIS: Why not?

MR. VOLCHOK: Because there are cases set the next day, and based on the practice and procedures adopted by the board and by the Director, and coming down through the presiding judge, you have another seven or eight people in there or ten people the following morning that say, "My case is set for today."

Now, if you back them up on a day-to-day basis, we'd have havoc; we'd have chaos.

If we had a master calendar system, such as they use in the Los Angeles County Court, it might be different because then when a case is ready for trial, it's assigned out to a judge who's not doing anything right now. He just finished a trial. So, we have all the other paper work to do, and they don't do that.

It's a complicated system. I could go on for hours talking about ways I could recommend to improve it.

SENATOR ELLIS: So, if you have a time limit of 30 days, that really doesn't mean anything because you could have a year.

MR. VOLCHOK: Not until the case is submitted to decision. It's not submitted to decision until after it's finished.

SENATOR ELLIS: When does the 30 days start? When does the clock start running on the 30 days?

MR. VOLCHOK: I guess the Code section speaks for itself. The 30 days starts to run when the judge says, "The matter is submitted for decision," for disposition of the case.

SENATOR ELLIS: Do you ever run over that?

MR. VOLCHOK: Oh, sure. Happens more -- very frequently.

SENATOR ELLIS: Have you ever failed to get paid?

MR. VOLCHOK: No.

SENATOR ELLIS: Then who's breaking the law there if you go over the 30 days?

MR. VOLCHOK: Well, there's a question. The 30 days has nothing to do with payment; that's the 90 days statute.

SENATOR ELLIS: Have you ever gone over 90 days?

MR. VOLCHOK: Not on cases that have been submitted for decision. If you're asking me personally, I haven't.

SENATOR ELLIS: You've never lost pay?

MR. VOLCHOK: No, sir.

SENATOR ELLIS: That's quite an incentive.

Okay, the Chairman's getting antsy. I know he wants to quit here.

VICE CHAIRMAN CRAVEN: No, the Chairman would like to declare a ten-minute recess.

(Thereupon a brief recess was taken.)

VICE CHAIRMAN CRAVEN: Nick, would you have any objection to taking testimony as a subcommittee?

SENATOR PETRIS: Not a bit.

VICE CHAIRMAN CRAVEN: Very well.

Would you proceed, please, sir. Tell us your name.

MR. ROBINS: Thank you, sir.

My name's Clayton Robins. I am a Workers Compensation judge in the Van Nuys office of the WCAB.

I had a bit of fear coming up here today, but I'm glad I got here.

VICE CHAIRMAN CRAVEN: We're glad you came.

MR. ROBINS: Thank you, sir.

I am angry now, because I heard some things I couldn't believe. I heard some things outside that were really bad. I don't mean outside the door here; I mean in the past, past times.

When I hear that judges are not doing their jobs, I get a bit angry. When I hear Mr. Carmody say that he wants to have an 8-5 office, I hope he doesn't apply it to me because then I won't be able to come between 7:00-7:30 every morning, which I do. I don't stay after five o'clock because by five, I'm pretty well exhausted.

Unfortunately, it's not the kind of pleasant tiredness that you get when you feel that you've done a good job. It's exhaustion without feeling that you've accomplished very much.

Now, I too have some statistics. Just -- this happens to be the July set. If you want to see them, I've got plenty of copies. This is from the Van Nuys office.

We have all sorts of statistics, and I -- if you'll excuse the barnyard talk -- I think they are comparable to apples.

We talk about how many cases are set: X number of thousands, hundreds, and everything. These cases aren't set. They're put onto a conference calendar in order to satisfy what the Legislature wanted to get out the cases in time, you know, just in as quick as possible time after Declarations of Readiness

are filed. But they're not set with the view to having them tried.

And we get all sorts of funny statistics. I have here Judge Feinstein from our office. Trials set in the office for the month of July, 146; trials held in the office, 162.

Now, I asked Dan Feinstein, how did you try 16 more cases than were assigned to you to try? I don't know. I don't make up these statistics. Somebody else does it.

Now, I get -- I take a look at mine, and I hear, gee, judges are taking all these cases off calendar, and we're continuing all these cases.

According to these statistics in July, I took off two cases off calendar for trial, and I continued five. Those are trials, you understand. We have loads of conferences.

My day starts out like this. It's going to change in September to be what Judge Volchok told you about, loads of cases in the afternoon and so forth. But right now, my day works like this. Maybe six to eight conferences, and two to three trials set for the morning, and again similarly in the afternoon.

Now, the conferences are these ones that are set to get them within some supposedly reasonable time from the time that the hearing is requested. Now, a certain number of them settle.

Now, I assume that if they're going to send these to me, they're going in front of me because I've got some little bit of wisdom that I might impart to the parties. They want some input from me; otherwise they could send them to a clerk to get a new date. They don't have to have them come up on calendar, on a

conference calendar otherwise. They could just send out the trial date.

But what happens is, they come up. By the time I get done handling six to eight conference calendars, I've got maybe an hour to try a case.

So, in the last few months, and this has really come all together in the last few months, since February, and I'll tell you about that in a minute. I can try a case that has maybe one issue to completion. If I start a case that has more than that, it isn't going to be finished. The afternoon calendar's going to take over, and it'll go over to next May, nine months. Any cases that don't settle on conference, I have to continue to trial. Nine months, next May.

Now, all of these cases are coming up in nine months. Now, these are cases that have been continued for one reason or another. I can't possibly try all those cases that are set on the same day nine months hence. That means somebody is going to go over if they don't settle, and I can't give anybody a priority, because they're all in the same boat. Well, the guy says, "I had it continued from last August," because they're all continued from last August when we come up next May.

Now, most of the people that come before us are back to work already simply because of delays, and some of them don't come up, just normally wouldn't come up before they're back to work. That means they've got to lose a day's pay; the attorneys are down there shuffling stuff in front of us and not getting to trial, instead of being back in their offices where they could be settling cases or better preparing them.

But we're doing -- we call it churning. The cases keep going on and on and on. This is because we do not have enough personnel.

Now, I said I was going to tell you about what happened last February. One morning in early February, we were setting cases in early June and that was for trial. All of a sudden that afternoon, we're setting them late September.

What happened? Mr. Carmody's task force took over. Now, the presiding judge that was in that office at that time, Judge Ryder, was screening Declarations of Readiness, and filtering them into the system. When his task force came down, Mr. Carmody's, they took all of them without screening, dumped them in on a calendar; pushed the ones that were already in the pipeline that I would have been setting in June that afternoon, and pushed them over to September; crowded up all the so-called backlog, and we were stuck with them. And that backlog increased from -- what would that have been, February to September is seven months -- it increased for a while to ten, but it's back down to nine. But it's getting bigger in numbers.

The person that he sent down there, you heard Judge Volchok say that Mr. Carmody hasn't been there in 20 months. Now, I have nothing personally against Mr. Carmody. I've never met the man. Sitting here today is the first time I've ever personally seen this gentleman. I recognized him from pictures, and that's it. That's the first time, and I've been doing this for 13 years come November 1, that I haven't seen the Administrative Director in a year in any of the three offices

that I've worked in: Pomona, Los Angeles, Van Nuys. Just haven't seen him.

What he has done is, he sent down this task force, which really consisted of one person. We'll call her Pat because that's her name.

Now Pat, Pat has a concept that if you clean out the clerk's office of pieces of paper, then you've accomplished something. So what happens is that she cleans the office out on crash programs. One day she'll take one -- one period of time she'll take the mail, clean it out. Other times she'll take Declarations of Readiness, clean them out.

Well, what she did is, she worked on Declarations of Readiness, and you heard the 650 inches of unsorted mail. It was 654 inches, and that was in our office. Because all she did was work on calendaring these Declarations of Readiness, getting them up ahead. And all the mail that would have obviated a big bunch of those settings, because we get letters in that say, "Cancel the hearing," "We've been paid," you know, whatever it is, those have been sitting in there.

The attorneys are afraid not to show up, so we get a crowd that comes in there. They've got nothing to do because they actually don't need the hearing in the first place.

Then what happens is that the people that are doing all this work are clerks, are overworked. They're just plain meeting themselves coming in the door.

Now, when this happens, they make mistakes, and they make a lot of mistakes. They don't send out notices; they don't send them out properly; they don't mark them properly.

And here's the funny part. The more mistakes they make, the more credit they get because cases, then, a case comes up to me, and it has to be continued. Now again, we're not talking trial. We're talking about conferences. The case has to be continued because somebody isn't there. So now it has to be reset. Another statistic for setting.

They didn't screen any of these Declarations of Readiness. Cases were settled. Declarations of Readiness were uncoordinated with the file, and we've got cases set the way people vote in Chicago -- they count the dead ones. I mean cases stamped right on the case covers: Closed by Compromise and Release. And the parties show up because they're a little afraid there may be something hanging that wasn't taken care of. So, they're there again, and more and more statistics keep rolling through.

Now, to show you how statistics can be built up, we've got two kinds of statistics. We've got plain inflated ones, and we've got some that just don't mean anything.

I'll show you how you can inflate cases. In every compromise and release there's a little blurb that says: This compromise and release settles all injuries that may have occurred to the same part of the body during the person's entire employment. In some offices, they count that as a second settlement, so you've got two statistics instead of one. In some office,s they actually go so far as to make up a new folder to accomplish that, photocopy it. It's really only one settlement. Now you've got two statistics. It's not happening that way.

I have in this month 232 statistics. I was the third highest judge in the office; 232 statistics, decisions. Do you know how many I tried? How many cases were actual trial decisions? Two.

Now, Mr. Carmody has stated, or has been quoted as stating -- and I hope that I'm right on this. I don't want to misquote -- if all the judges are doing are approving compromises and releases, you could have claims adjustors do it. Well, I don't know if it's news to him, but I'll tell you we do have claims adjustors doing it.

Where a claimant is unrepresented, he's dealing directly with the insurance company, those dispositions generally come through what we call an information and assistance officer, who were generally former claims adjustors for insurance companies, usually from the State Fund. And they make recommendations on them, and they come to me or the other judges. I have to kick back 62 percent of those because they don't meet minimum standards that the judges are charged by law in approving settlements for adequacy. Just don't meet those standards.

I have yet, in about, I think, four years or more that these people have been doing this work, yet to see one of them come from an information and assistance officer saying: The insurance company took too long to get this thing out and a penalty should apply. I find them and send them back. So, there's your delivery system stretched out. And I'm talking about where the case had been finalized in 1984, and we don't get the darn settlement papers in from the insurance company until 1987.

So, we do have claims adjustors doing this stuff. The thing is, is that we need more judges to get this out.

More on phony statistics.

VICE CHAIRMAN CRAVEN: Judge, if I may interrupt.

We are just 12 minutes away from two hours on this particular hearing, which I think sounds like something out of the Van Nuys office to me.

MR. ROBINS: But it's really awful; it's really awful.

But let me just close --

VICE CHAIRMAN CRAVEN: What I'm just suggesting, if I may, sir, is, I am presuming that you are really indicting the system as you know it and have to work in it. And I think all of us are willing to stipulate that it is an administrative morass, to say the very least.

Would I be correct in presuming that you attribute the failure of the system to the nominee?

MR. ROBINS: In the final analysis, yes.

We had -- we had one good Administrative Director that I can remember, and that was a Reagan appointee named Roy Bell. He was terrific.

After that, we went down hill to the nadir, which is the present appointee, who is doing nothing to help it.

VICE CHAIRMAN CRAVEN: Do we have a volume which is considerably greater than it was during the Reagan years, for example?

MR. ROBINS: I came in right at the beginning of the Brown years, so I had the pleasure of the last few months of Mr. Bell's administration. The volume has increased since then.

VICE CHAIRMAN CRAVEN: So, that would attribute, or some of it may be attributed to a greater volume that you have to face.

MR. ROBINS: But the volume -- with volume, you should have increase in personnel and equipment to match it.

VICE CHAIRMAN CRAVEN: I understand that, and I agree with you wholeheartedly.

One of the things that I thought of when your colleague was testifying here is the fact that I wonder whether comment had been made through the organization to which he belongs to the administration relative to the problem, or to a representative of the district, for example his Senator for one, to see if some increase can be made in the budgeting process?

None of us, you know, have such legerdemain that we can do any number of things without the wherewithal, whether it be personnel or money, or a combination of both, and I think you recognize that.

MR. ROBINS: Well, Senator, has this administration, has Mr. Carmody, come and asked you for more money or asked you for less money?

VICE CHAIRMAN CRAVEN: He has done neither as far as it pertains to me, because I, like yourself, I've never seen Mr. Carmody until today.

However, I don't know how much of a lobbying effort has been made on the part of Mr. Carmody as the Director, if you will, with the administration, or the administration's attitude on it.

But it presses me that judges, as well as Mr. Carmody, could make a very good case to the Governor. You know, a lot of times we presume that the Governor knows everything about everything that the state does. And that probably is flattering, but somewhat unfair, because obviously the Governor doesn't know all of those things. He has to be told by someone.

And in defense of the Governor, to give him the benefit of the doubt, it would be nice if we knew that somewhere along the record was the fact that the judges in concert said: Governor, here's what we think you can do to improve the system. And perhaps Mr. Carmody could run it for you if he had the tools.

MR. ROBINS: Well, I'm not here to indict the Governor. The Governor is --

VICE CHAIRMAN CRAVEN: No, I recognize that.

MR. ROBINS: -- not up for confirmation today. This gentleman is, and he's the one who should be carrying the word that we've been trying to pass off to him to the Governor that we need these things. He's not.

VICE CHAIRMAN CRAVEN: I don't disagree with what you say.

MR. ROBINS: I would just like to close that I commend the letter of Mrs. Judge Burke of August 25 to you as a summary of really the way I feel and the way, I think, the majority of judges feel.

I won't comment of Mr. Judge Burke's letter, because he's right here, and he can comment on his own.

VICE CHAIRMAN CRAVEN: Very well, thank you very much, Judge.

SENATOR MELLO: Mr. Chairman.

Before you leave, I'm sorry I was awful busy on the phone.

I wanted to ask your colleague, but rather than call him back, you can probably answer my question.

Are you from the same Van Nuys court?

MR. ROBINS: Yes, I am.

SENATOR MELLO: So the same nine or ten months of delays are being experienced there as Judge Volchok indicated?

MR. ROBINS: Yes, sir.

SENATOR MELLO: My question is, what experience have you had with the injured workers who have to go through this nine months time? Do they get welfare? How are they living? And if they're the head of a household, what happens to them during this nine or ten months period?

MR. ROBINS: They get welfare. They go bankrupt. They get behind in child support payments, and then the case comes before me to pay off a lien for child support. All sorts of terrible things.

Those that are working at the very least lose time from work to come down two and three times without having their cases resolved.

And then, one more thing. When a case drags that long, people settle for the wrong reasons. You settle a case because what is your chance of winning or losing; you don't settle a case out of desperation.

Judge Volchok just showed me that the EDD picks up some of the tab on this thing when they pick up disability benefits. They're supposed to get their money back. Another trip. What happens is, when they settle, they chop them down. They take 10 cents on the dollar on their money. That's all public money.

SENATOR MELLO: I just wanted to confirm what I've been experiencing. I really don't think my time ought to be spent in my district trying to make the system work when others are really in charge of it. But, you know, that's what happens.

So in other words, based on your testimony, I get it that we're paying more, then, probably through welfare and through other disability payments during this delay that could have really paid for some additional judges and staffing had we acted more expeditiously in processing the injured workers there.

Is that a correct statement?

MR. ROBINS: That's probably so.

Senator, there's nothing wrong with the system. There's wrong with the way the system is being operated.

You don't have to change Workers Comp radically. What you have to do is get the deadwood out at the top.

SENATOR MELLO: Yes, but I think, and I'm sorry that Mr. Rinaldi was here and he left, because he is the top person in charge of the Department of Industrial Relations, but it would appear to me, and the Governor is very frugal and watches the dollars like we try to watch it here in the Legislature, if the message can be taken back to him and say: "Look, those positions he vetoed in the budget have resulted in costing the state more

money because now we're paying welfare, and disability, and other costs through these injured workers, where if their claims were processed properly, it would have come out of the settlement of the claim and the state would have been saving money.

MR. ROBINS: If the end product in the Governor's cogitations is frugality, that would be true.

But what if what is attempted to be done is to take out the regulatory agencies, and we are in a sense one, because the benefits that we pay are supposed to give the negative incentive for safety and so forth. But what if the purpose is to take out all of the regulations, rather than just to save money, for the benefits of certain groups? See, that's a different problem there.

It might not matter if the thing went on to welfare if you're figuring that. But if you're figuring saving money, you're right. We're spending it elsewhere.

SENATOR MELLO: We're criticized about how much money we're spending on welfare.

MR. ROBINS: Yeah.

SENATOR MELLO: So if we're paying for people's subsistence out of welfare, when it should be coming out of the Workers Compensation Fund, then that's not right either.

MR. ROBINS: That's right.

SENATOR MELLO: Thank you very much for your response.

MR. ROBINS: Thank you very much, sir.

MR. BURKE: Thank you very much. My name is Francis G. Burke.

VICE CHAIRMAN CRAVEN: Yes, Judge.

MR. BURKE: I'm also a Workers Compensation Judge, attached to the Pomona office of the Workers Compensation Appeals Board.

I'm not here in any official capacity, except as a citizen of the state of California.

Both Judge Volchok and Judge Robins have promoted a fair amount of thunder, and I'm not going to spend much time.

One area that I think is deserving of comment is one of employee morale. One of the biggest items is the delay in the delivery of Workers Compensation benefits to the injured worker, and that also has an effect on the insurance carrier and the employer in the long run.

An instrumental part of that, I think, it you have a high employee morale, you're going to get a lot more done than if you don't. I think that the rank and file, the worker bee, so to speak, have sensed in the last 18-20 months a feeling that their position is one that's regarded with disdain. And I think that manifests itself probably in some of the problems we're addressing here this afternoon.

There's still some life in the system. It's been around for 70 years. We have a lot of budgetary considerations that I think are serious and real, but a fair amount of it, I think, can be overcome if there's an esprit de corps.

There is a cliche that loyalty down begets loyalty up. And frankly, I've not seen it in the last 18 months. I've not seen it for a few years. And I think that would go a long way to

improve the delivery system that we're faced with and the problems we're faced with today.

Not withstanding Mr. Carmody's best efforts, I'm reminded of the story of the sparrow in the barnyard. He was pecking away around a fresh pile of manure. And after a little while, when he had his fill, he hopped up to the top of this manure and started chirping away boastfully. Down swooped a hawk and carried the sparrow away. The moral of the story is: Don't brag when you're full of B.S.

So with that, again, I think we ought to address the spirit, the morale. I think that would go to solving a lot of problems, whether Mr. Carmody's confirmed or not. But it's a problem I think should be addressed.

Thank you.

VICE CHAIRMAN CRAVEN: Senator Petris.

SENATOR PETRIS: You mentioned the last 18 months, because that's the time Mr. Carmody's been serving.

MR. BURKE: Yes.

SENATOR PETRIS: My recollection is that we've had problems of congestion and lack of resources and a lot of other related problems for a lot longer than that, especially in the Appeals Board. We've just had a terrible backlog there as well.

Is there any difference in the last 18 months compared to the prior years?

MR. BURKE: I think there has been an intensification. I don't know if it's intentional or unintentional, but I think that the judges, of which I'm one, as well as the other staff

members feel put upon, and being pointed at as being the source of the problems, which is not necessarily the case.

I that that, coupled with the efforts toward reform, and the suspicion among many of us that reform is the ultimate goal of this particular administration, and as a result they're letting everything tumble down.

I think those are the elements that give despair, and that's, I think, what's occurred perhaps in the last actual three or four years. But I think it's intensified in the last 18-20 months.

SENATOR PETRIS: Thank you.

VICE CHAIRMAN CRAVEN: Thank you very much, Judge.

MR. BURKE: Thank you very much.

VICE CHAIRMAN CRAVEN: Do we have another person who wishes to testify? How many more people intend to testify? All right, fine. Who ever is next, please come up.

I'll ask you, please, sir, try to be as succinct as you can. We've heard all of the stories, I think, quite well, and hopefully you will not be repetitious.

MR. MARKEY: Mr. Chairman, Members of the Committee, I'm Joe Markey, representing the California Self-Insurers Association, a group of employers in the community.

We have worked very closely with Mr. Carmody over the 18 months. Some of it in negotiations, trying to bring about a better system through a compromise agreement with organized labor, and additionally in trying to get resolution of the problems.

I've been around the system since prior to Mr. Bell that Judge Burke was talking about, and I would like to just convey to you that I see a receptivity, a willingness to address some of the problems that exist in the nonlitigation aspects of Workers Comp, a desire to improve the promptness of payment of benefits, and we're working with the Administrative Director in trying to improve that and improving the audit, the results of the auditing in order to make sure that employers are paying benefits, because we think that that will help to diminish litigation. Employers have lost the ball game if it gets into litigation, as you just heard. So, it's to our best interest to diminish the need for litigation.

We have seen some improvement in the area of adoption of vocational rehabilitation rules and regulations that we hope will make it less litigious, a little more beneficial to the injured workers, and then also in medical advisory guidelines on the rating of psychiatric disabilities, and a great deal of work that's been done in the area of rating back disabilities. And I think all of these will help in the delivery of benefits to the injured workers, and certainly at a better cost picture for the employers of California.

Thank you.

VICE CHAIRMAN CRAVEN: Thank you very much.

Next gentleman.

MR. BRAKENSIEK: Yes, I'm Carl Brakensiek, representing the California Society of Industrial Medical and Surgery.

It is a fairly rare occasion when Mr. Markey and I can talk on the same side of an issue, but we are here strongly in support of Mr. Carmody, for a number of reasons.

When Barry was first appointed, I called him on the phone. You may recall this conversation we had. I asked him why in the world he was interested in becoming the Administrative Director, because the Division of Industrial Accidents has a number of internal problems which have existed for many, many years. And he knew fully well that he was inheriting a hornet's nest.

There are many problems. Senator Mello, you received a number of letters today. I've heard those same stories, and I think they are at least 99 percent valid. There are many internal problems with the Division. But these are problems that have existed for many years and for several administrations.

Mr. Carmody, when we're looking at his appointment, we have to differentiate between the office and the individual. And we have to recognize that many of the things that have happened in the last 18 months have been frustrations for Mr. Carmody, because he has been forced to worked within very tight limitations.

If he had his choice, I'm sure that things would be substantially different than they are, but we have to realize that limitations are imposed from above, and he has had to do his very best to live within those limitations.

We have a number of philosophical differences with him, but we've been able to openly discuss them. And he keeps an open mind for us.

I can tell you that from our experience with working directly with Mr. Carmody, the individual, that he is honest, he is dedicated, he is open-minded, and he's a straight shooter. He had a reputation when he came to this job as a trouble shooter, and I think he's done an outstanding job of identifying what the problems are within the Division of Industrial Accidents and doing everything he can within the parameters to see that the system could be improved.

We strongly urge you to approve his nomination today.

Thank you.

VICE CHAIRMAN CRAVEN: Thank you very much, sir.

Mr. Burdick.

SENATOR MELLO: I'd like to ask a question.

In one of the statements, he said that limitations come from above.

Please tell me who you're referring to? I mean, how far up does it go? All the way up to the Almighty?

MR. BRAKENSIEK: The problem, as I see it, lies squarely in the corner office, the Governor's Office.

But I want to point out that the problems that I have seen, and I've only been working with this since 1974, the problems started with Governor Jerry Brown, and they have only been perpetuated by the present governor.

Certainly these problems are not problems that arose when Mr. Carmody came on the scene. He inherited them. They preexisted.

SENATOR MELLO: You'd think that somebody would give the message to whoever the Governor might be, Jerry Brown or Governor Deukmejian, that we have a problem here.

I know one thing. We were in the food processing business, having so many people working on our lines. If production goes up 100 percent, you've got to put more people there to get the job done. Building automobiles, everything's the same.

What they're being asked to do, the agency, the judges, as the workload goes up 400 percent, there's no increase in staffing.

Have you ever communicated your thoughts to the Governor's Office?

MR. BRAKENSIEK: Yes, we have.

SENATOR MELLO: What's been the response?

MR. BRAKENSIEK: I think the situation, as we see it now, it's been a nonresponse.

SENATOR MELLO: I think if Mr. Rinaldi, who was here earlier, and Mr. Carmody, if they would go down there -- I mean, personally, I wouldn't want to be tied into a situation that's going down hill. I like things to go up and become successful.

I would go down there and say, "Look, we have problems here. Let's try and straighten out these problems."

Yet it seems like, from what I just heard here this afternoon, and I was not surprised because I knew this before, we need more staff to handle the program. The workload is just too great.

MR. BRAKENSIEK: There has been extensive discussion over the years as to the need for Workers Compensation reform. There is legislation pending right now that would attempt to accomplish that.

Our response has been that the most of the problems could be addressed by having more complete staffing in the Division.

I must commend the Legislature because they have responsibility put those positions into the budget each year, which unfortunately have been blue-penciled.

SENATOR MELLO: Thank you.

VICE CHAIRMAN CRAVEN: Thank you, sir.

Mr. Burdick.

MR. BURDICK: Mr. Chairman, Members of the Committee, I'm here also in support and hope that you will recommend confirmation of Mr. Carmody.

It's very rare we appear before this Committee, but I think after listening to the indictment, particularly of the system, by the judges, I thought that we should point out a couple of things that have been experienced with the public sector managers.

I'd just like to point out a couple of things. I know we asked to address some of the problems we saw in the system from the public sector standpoint with Mr. Carmody. And following that meeting, I talked to our professional, who's a risk manager Workers Comp administrator, and generally based on their professional experience, and experience with the people

that have held that position over the years, I think again you're looking at the position. There was unanimous agreement that this was what they felt was one of the first real managers that's been put into that position in some period of time.

I think it was pointed out by Mr. Brakensiek that he's straight forward, he's honest. He deals with the problems. I think that some of this probably comes from his background. He understands both sides of the issue. When we deal with him, he understands it. I don't know if he mentioned that he started off as a former Highway Patrolman, and when we get down talking about our issues, he understands the other side.

I think whatever the issue was that we discussed, I think the one thing he continually came back and reminded us of, and that is that the worker is primary. And that's always been his position on any position he's taken, and we happen to agree with that. That that has to be the first consideration in to how you deal with the system.

Again, as I say, I think most of the comments have been more at the system and not with the individual. His communication has been exceptional. He's been open to all parties. He's been willing to consider ideas, and he's been very instrumental in trying to bring the parties together, particularly all the parties in the system, and trying to get them to resolve and to provide any assistance he can to help them bring about some change in the system.

Hopefully, the discussions are going on as mentioned with the current Workers Comp bill. We'll take one more run at

it in conference committee, and with Senator Lockyer's bill before this Session is over, and hopefully we can do something to bring about some changes in the system.

The benefits are inadequate and the system is a disaster.

I think just in closing, I'd like to say that we think that based on the feedback we've got from our people, that there's been more accomplishments, more changes, more efforts to solve problems than our people have seen in a number of years. We'd urge you to support his confirmation.

VICE CHAIRMAN CRAVEN: Thank you very much.

I don't want to persuade you. If you'd like to make a comment, then please do.

MR. VIVAS: Mr. Chairman, I work for Mr. Carmody. I'm on my own time.

I'm sorry, just one comment.

I have worked for three Administrative Directors. And I have to come up here and say that I haven't seen anybody work as hard to effectuate administrative changes as he has.

I want to be a judge. I'm on the judges list. And I'm not afraid to yell and scream if I thought my caseload was that strong.

But I can see from the Department's --

SENATOR PETRIS: Would you identify yourself?

MR. VIVAS: I'm sorry, Senator.

My name is Ernest Vivas. I'm the attorney for the Division, and I do work for Mr. Carmody.

SENATOR PETRIS: What is your last name?

MR. VIVAS: Vivas, V-i-v-a-s.

I see it from a standpoint that he has tackled administrative problems in the various offices, and we do have offices who are getting decisions out in a timely basis, and not all of the problems are staffing. And he's not unwilling to attack staffing problems, as he has filled in the last three months every job except one in Southern California with regard to judge vacancies.

I happen to be aware of those things because I'm on the list. Like I say, I'm on my time.

I'm taken aback by what I see as an indictment of Mr. Carmody because of some problems in the system that he's trying desperately to overcome.

VICE CHAIRMAN CRAVEN: Thank you very much, sir.

Anyone else in the audience wishing to testify? There appears to be none.

Mr. Carmody, do you want to close, as we say, to sum up, or rebut, or what you choose to do in closing?

MR. CARMODY: I appreciate the comments made by the judges because I know how I'd feel if I was in their place. And I respect the fact that many of them feel that they are put upon by the workload that they have to deal with.

On the other hand, I believe that when you're put upon by the workload, you have an obligation to do your best to resolve the workload and to offer to management suggestions on how to make the system work a little better. And in some cases, that has been done.

I'm not here to make everybody happy. My job is to run a system that I think we all agree has some troubles. I made a comment earlier about I thought the system was exemplary.

I think the administration, the way the Workers Compensation's set up, the judicial and administrative joining, the way the judges are set up policy-wise, I think that system is exemplary.

I don't think the way that insurance carriers and employers and employees have to deal with the system is exemplary. I think it's a disaster. I think when an injured worker has to wait nine months, and in some areas is, quote, "starved out" to accept a settlement, that's not acceptable.

On the other hand, I have pushed our benefit notices program so I could identify those carriers that do just those things. I've talked to our presiding judges about imposing penalties against those carrier who do those things with respect to unreasonable delay. But I have no statutory authority to impose penalties, only judges have, so I can only encourage them to do that.

In summation, as late as last Wednesday evening, I met with organized labor, the business leaders in this state, the trial bar, the insurance industry, the Chamber and representatives of the Chamber in attempts to come about resolution on the issue of Workers Comp reform.

I will continue towards that. I will continue to force those people together. I picked up the tab. I'll continue to pick up the tab at those meetings until I can get some movement

towards reform legislation, or convince the Governor through that body that change is needed.

I have nothing further to say. Thank you.

VICE CHAIRMAN CRAVEN: Thank you very much, Mr. Carmody.

SENATOR ELLIS: Move confirmation.

SENATOR PETRIS: May I ask a question?

VICE CHAIRMAN CRAVEN: Senator Ellis moves.

Senator Petris.

SENATOR PETRIS: One of the letters we got complained about an appointment of a judge who was a muni. court judge and apparently got so much static from lawyers and others that he stepped down. He didn't run for election at the time it came up.

Then he was moved over to your shop, and you directed, I guess, the President of the Conference to interview him. You directed somebody, one of the judges, to interview him.

After the interview, the judge recommended against the appointment, and he was appointed. There have been complaints about him as a judge.

I guess you know him. I don't want to use a name.

MR. CARMODY: Sure.

SENATOR PETRIS: Can you comment on that?

MR. CARMODY: Sure, I'd be glad to.

That individual took the open examination for Workers Compensation Judge and placed number four on the list.

Numbers one and two were appointed and were placed in another office. Number three declined the interview, and I was left with number four.

Number four lives in the area, this individual, in the area where I had the need.

Prior to the discussion with the presiding judge about that individual, I had no comment as to his appropriateness or inappropriateness. He had five years as a public defender; nine years as a prosecutor; had been elected twice to the municipal court bench.

He retired from the bench. That list that he was on was public in the early part of the year.

When I talked to the presiding judge, the presiding judge said, "Well, there's some feelings out there that he is this, or he is that, and I'm not sure he'd be appropriate."

The bottom line is that we had to utilize the civil service process. We're required to do that.

The gentleman is on probation for one year. If during this year's time any of those allegations come to fruition, as far as his behavior, demeanor, or the handling of cases, he will be summarily dealt with, and we will reject him on probation.

And I talked to the individual who spoke with you about his appointment, and I explained that to that individual. And I said, "You are the watch dog. You advise me if you run into or encounter any impropriety with the way he conducts himself or conducts his cases."

And I'm waiting, and I haven't heard anything thus far.

SENATOR PETRIS: When you have a civil service situation and you use up the first three, you go to the fourth, isn't there a provision for getting another three?

MR. CARMODY: That's correct, we can use the rule of three, but I'm down to the number six on the list at this point in time.

SENATOR PETRIS: How many on the list?

MR. CARMODY: I have close to 150.

SENATOR PETRIS: There's one in the room here, I guess.

(Laughter.)

MR. CARMODY: We have nine ranks of judges. In those nine ranks, we have 150 candidates.

I used up so far, with respect to the L.A. Basin and the northern part of the -- north county of Ventura and Santa Barbara, the first six ranks.

SENATOR PETRIS: Thanks.

MR. CARMODY: Thank you, Senator.

VICE CHAIRMAN CRAVEN: Senator Ellis has moved. There being no further discussion, call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: No.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: No.

SECRETARY WEBB: Senator Craven.

VICE CHAIRMAN CRAVEN: Aye.

SECRETARY WEBB: Two to two.

SENATOR ELLIS: Move reconsideration.

SENATOR PETRIS: We ought to give Senator Roberti a chance to vote.

VICE CHAIRMAN CRAVEN: I was just going to say, I think that we should give our Chairman, Senator Roberti, an opportunity to review the file on this case, bring this matter back again for -- I don't know whether to call it reconsideration or give Senator Roberti an opportunity to vote on the matter.

Would that be in accord with the Committee?

SENATOR MELLO: Mr. Chairman, if I may, I think the Rules Committee is bound by the same rules of any policy committee, and any motion that fails --

VICE CHAIRMAN CRAVEN: Well, do you want to move for reconsideration then? We can do it that way.

SENATOR MELLO: Yes, we ought to call for reconsideration and we can take it up by polling the Members on the Floor tomorrow.

VICE CHAIRMAN CRAVEN: Why don't we announce the vote: two-two. And Senator Ellis, I think, has already moved reconsideration on the matter. And then we can poll the Members as to that on the Floor to include the Chairman.

All right?

SENATOR MELLO: We can poll for reconsideration, which means it would have to come back to another public meeting of the Rules Committee, which would probably be next Wednesday.

VICE CHAIRMAN CRAVEN: Yes, that's true.

SENATOR MELLO: Thank you.

VICE CHAIRMAN CRAVEN: All right.

No objection on reconsideration?

SENATOR PETRIS: No, I'm supporting it.

VICE CHAIRMAN CRAVEN: Very good.

SENATOR PETRIS: I just wanted to comment briefly, part of my problem is, I think it's important to send a message to the Governor on this no reform, no nothing. I've heard it in other areas, and I've seen a terrible erosion or deterioration because of this policy of statutes. He doesn't like certain statutes; he just ignores them.

And you're a victim. I know you inherited a bad situation. That's why I inquired about a comparison between now and a few years back.

But the Governor did this with OSHA, and before he eliminated OSHA he pulled their fangs. He cut back severely on their budget. It means the lives of workers, their safety; the health of workers. And he just seems to have this strange hostility toward the blue-collared person in this state. The ALRB's another area.

Now we come to this, and I know we had money in the budget to have somebody go in there, as we've done in other agencies, and review the whole thing and come up with a proposal to, you know, improve things. He knocked that out.

So in some ways I think you're the victim of this. I think it's most unfortunate.

I don't think that's the way, as Senator Mello said, to confront these things. The way to confront them is to propose legislation, and do one's best to get the legislation through.

If you lose on your particular program, you don't pick up all the marbles and leave. That's not the way this thing's supposed to work.

And that's why I voted the way I did.

VICE CHAIRMAN CRAVEN: Thank you, Senator.

SENATOR MELLO: If I may just make another comment, too, based on what Senator Petris has just stated.

It caught my attention during the matter, I was going to ask another question but I got so involved, I probably talked too long, and maybe I ought to just stop, but you mentioned about the reforms, and the Governor's unwilling to add more judges without reforms. I've heard Mr. Rinaldi and others talk about that.

Well, I know that the reforms would be. The Committee for Worker Compensation Reform, and what they had going last year, was to take away over $1 billion of take-aways from injured workers. Now if that's reform, then I think we'll never get any reforms.

You know, the injured workers in California, I have a list in my office, we are the lowest paid state in the whole nation. The injured worker can't lose any more. They're down at the bottom.

So the kind of reforms have to be at the administrative levels, have to be in the procedure and the process, and the workers somehow are going to have to get better benefits.

So I think your job in this position is to analyze and reject the thought that we're going to take money away from injured workers, but instead we're going to make a system that's going to be responsive and workable.

MR. CARMODY: I'd like the opportunity to do that.

SENATOR MELLO: Yes.

VICE CHAIRMAN CRAVEN: Very good.

Thank you very much, Mr. Carmody. We appreciate your forbearance.

Thank you judges and all of those of you who testified.

With the forbearance of the Committee, I would like to take Item Seven.

(Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 5:45 P.M.)

--oo0oo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of August, 1987.

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FRIDAY, SEPTEMBER 11, 1987

3:12 P.M.

Reported by:

Evelyn Mizak
Shorthand Reporter

APPEARANCES

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SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR JIM ELLIS

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

BARRY CARMODY, Administrative Director
Division of Industrial Accidents

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: Now, Mr. Carmody, you had a hearing.

MR. CARMODY: Yes, Senator.

CHAIRMAN ROBERTI: And unfortunately the vote was two to two and you've been reset.

Senator Ellis.

SENATOR ELLIS: Mr. Chairman, I know this is for vote only, and you don't want a lot of talk on it, but I would just like to point out that since Mr. Carmody appeared, that I've received support letters from the AFL-CIO supporting Mr. Carmody, signed by Mr. Jack Henning; from the California Self Insurers Association saying employees and employers of California will be losers if he's not confirmed, signed by Mr. Markey; by the California Municipal Utilities Association saying:

> "In our opinion Mr. Carmody has the necessary background and experience for the position,"

signed by Mr. Jordan; from the California Manufacturers saying he's been responsive, assertive and efficient, signed by Mr. Ellick; by the County Supervisors Association saying that he's been invaluable to CSAC as well as labor and employer groups in trying to reform the system, signed by Mr. Swendiman; and by the California Society of Industrial Medicine and Surgery endorsing him, signed by Mr. Carl Brakensiek; and by the Teamsters Union, signed by Mr. O'Hara; and by the California Center of Victimology, signed by Judith Rowland.

And I think that is a good cross-section of our labor-management of the state and would like to again move that Mr. Carmody be confirmed.

CHAIRMAN ROBERTI: Senator Ellis moves Mr. Carmody's confirmation.

I have given this a good deal of thought, Mr. Carmody, and I think, you're an honorable gentleman. And should you not be confirmed, you will still hold the position of Deputy Director, I understand.

MR. CARMODY: That's a position in name only, Senator.

CHAIRMAN ROBERTI: Why do you say that?

MR. CARMODY: I'm designated as the Deputy Director while I'm the Administrative Director by the Director of the Department, Ron Rinaldi.

CHAIRMAN ROBERTI: My concern is that you have a number of recommendations, but most of the organizations that represent law enforcement, people in the field, I would say, are opposing your confirmation mainly because they feel there is not a timely adjudication of the problems that have faced them over the years. And I think they especially would need that kind of timeliness.

Right now that, I would say, is the prevailing consideration in my mind, but I certainly want to give you some time to rebut or to speak to that if you choose to.

MR. CARMODY: I can only say that at this point in time we have the highest number of judges on the staff that we've ever had, and that I'm making inroads into what I believe are the necessary procedures to expedite the handling of cases.

And I'd be much willing and quite willing to talk to the Peace Officer Associations about their particular problems to see whether or not they can be addressed, but the problems are throughout the system.

And one of the suggestions that I've made to the Director and that I'm moving forward with is to fill all the positions authorized in the budget, the full staff.

CHAIRMAN ROBERTI: Is there any discussion or debate by the Committee Members:

We have had lengthy testimony. I'm sorry I was not here for much of it.

Senator Craven.

SENATOR CRAVEN: Since the last occasion that we had to hear from Mr. Carmody, I've had a few discussions with persons who are interested in this particular position, and frankly, the comments that I've heard really have been rather glowing on his behalf.

One of the things that I think has been sort of an inhibitor as to his ability to correct some of the failings in the system perhaps is best described as the sins of the past. I think he had a tendency to take over a rather flagging, lagging situation over which he had little or no control. I think he's operated short-handedly, and that's a point that I've had our leader, Senator Maddy, bring to the attention of the Governor as recently as this morning.

Although there was not definite commitment as to increasing staff to assist Mr. Carmody with his problem, there

was, I would say, a tacit agreement that they will do an evaluation of personnel and see if they can break loose some of the positions they may well have blue-penciled out at budget time.

So, I think they're cognizant of the problem, just as Mr. Carmody has mentioned in his testimony before us. So, I would just like to bring that to the attention of my colleagues so that they are aware of the fact that there is knowledge of the situation with the Governor, and hopefully some corrective action can and will be taken by that office.

CHAIRMAN ROBERTI: Any further discussion or debate? Do I hear a motion?

SENATOR CRAVEN: Senator Ellis moved.

CHAIRMAN ROBERTI: The Secretary will call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: No.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: No.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

SENATOR CRAVEN: No.

The vote is two to three; the confirmation is still with us.

SENATOR ELLIS: Is it appropriate to move for reconsideration?

CHAIRMAN ROBERTI: Senator Ellis moves reconsideration.

What is the rule on that? What are the Governor's options?

SENATOR ELLIS: Tomorrow is the last day.

MS. MICHEL: He cannot reappoint --

SENATOR ELLIS: I think it's going to be a mistake to leave that position vacant.

MS. MICHEL: He cannot reappoint Mr. Carmody to that position.

CHAIRMAN ROBERTI: For now the motion is still with us. We will be here until, like, ten o'clock. Not that anybody's bickering or debating, but it's a very tough, close call in my mind.

SENATOR CRAVEN: Obviously it is, Mr. Chairman, and for that reason I would like to move we rescind the action just taken.

CHAIRMAN ROBERTI: We'll still leave it in Committee.

SENATOR CRAVEN: Oh, yes.

CHAIRMAN ROBERTI: Senator Craven moves that the motion whereby the action was rejected be rescinded.

Secretary will call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is four to nothing; the motion is rescinded but it is still with us.

Thank you, Mr. Carmody.

MR. CARMODY: Thank you, Senators.

(Thereupon this portion of the Senate Rules Committee hearing was recessed at approximately 4:15 P.M. and later reconvened at approximately 11:30 P.M.)

CHAIRMAN ROBERTI: We have tried to work something out and negotiate a possibility to vote Mr. Carmody out. We may have come close, but my feeling at the moment is, unfortunately, we have not been able to do so.

Unless there's a contrary motion, I believe his nomination's on the table.

SENATOR ELLIS: I think, in all due respect to Mr. Carmody, we should take a vote.

I would move to approve the confirmation.

CHAIRMAN ROBERTI: Senator Ellis moves to approve the confirmation.

SENATOR CRAVEN: On the motion, Mr. Chairman.

I know that rather extensive discussions were held with the Administration, and I know they have equaled at least three

visitations by Senator Maddy, who, when he was last in here to speak to Senator Ellis and myself, had led us to believe that the Administration had given evidence of cooperation that the Chairman had sought.

Now, am I to believe, Mr. Chairman, that that has collasped?

CHAIRMAN ROBERTI: Yes.

SENATOR CRAVEN: Mr. Chairman, now that you've returned, my feeling is now and has been for some time, since I heard Mr. Carmody make his presentation and heard a lot of people come in and speak against him for one reason or another, as well as people who supported him, that Mr. Carmody is really the victim of the system; that the problem is really systemic rather than a failure to execute on Mr. Carmody's part.

Most people that I've talked to give, I think, very good, strong evidence that they consider his administrative skills to be not only adequate, but quite good.

But you can just do so much. If you don't have the troops, it's hard to win the battle.

I think that we should keep that in mind, in all charity, because I think it's very, very important.

I hate to see a person who is, in my judgment, amply qualified lose because of something over which he has little or no control. I just have to feel based on what I've been told by our leader that something was going to happen down there, and I can't understand now how they have done an about-face on that.

CHAIRMAN ROBERTI: Well, we tried. I don't think there was ever an agreement.

The best I can tell you, Senator, is to refer to what I said earlier, and that is the almost universal opposition of most of the police and sheriff organizations in the State who've come up before the various boards in the Compensation system with a number of issues concerning their members' stress, disabilities, things of this nature, some of them, and as I can best see it, their opposition is almost universal. That is just a heavy thing to overcome.

It has nothing to do with any fears about Mr. Carmody, any personal wrong feelings I might hold for Mr. Carmody, who I think is a very fine gentlemen, but I think there were some feelings that he is not the administrator for this position.

I might also say a number of Workers Compensation Judges have also expressed opposition.

SENATOR CRAVEN: Well, Mr. President, if I may.

CHAIRMAN ROBERTI: Yes, Senator.

SENATOR CRAVEN: It would appear that certain elements of the law enforcement community are opposed to Mr. Carmody, but certainly they're not attributing their lack of success, if that be the way to phrase it, in the courts which operate under Mr. Carmody's jursidiction as a definite, distinct, direct tie to Mr. Carmody as an individual and/or as an administrator.

CHAIRMAN ROBERTI: With some, yes, it is I would say. Without getting into the merits, the demeanor of all the correspondence --

SENATOR CRAVEN: Probably to the same degree that your constituents and mine hold many things against us that are somewhat beyond our purview. So, in that he probably stands with us in having to take some of the slings and arrows which are part of the accoutrements of our trade.

And I just don't think we should just lump everything on him because, to go back to what I said before, a lot of that he inherited; a lot of it is because he's understaffed.

Judges make the decisions. I don't think Mr. Carmody does.

CHAIRMAN ROBERTI: Senator Ellis' motion is before us.

SENATOR ELLIS: One more comment, please.

CHAIRMAN ROBERTI: Yes, Senator.

SENATOR ELLIS: Well, we had the judges here. And quite frankly, I was disappointed in the quality of those individuals. If I had the authority, I'd can them. Anybody that takes objection to their boss because they do not buy a clock for them to hang on the wall, or will not provide a flag for them to have in their office, to me is very, very petty.

I think that the only reason they were here objecting to Mr. Carmody was because he went in and tried to make them do some work. They have been sloughing off for years; they knew it. He wanted them to work eight hours, or maybe seven hours a day. They did not want to work. They do not want to work. They will oppose any person that is nominated for this position if that person wants them to work.

Now, you get some namby-pamby up here to let them run off and do what they will, and sure, they'll get confirmed because the judges will love them.

He's a tough man. He's a just man. And he's the kind of a person you want in that position. You want some production, and you're not going to get it if you get some weak-backed person that can't administrate or cannot direct.

And I think it's a shame that this man is being denied confirmation because, and we all acknowledge, he's not been given the full complement of tools he needs to do the job. But that's not his fault.

CHAIRMAN ROBERTI: I might just read the law enforcement groups that are opposed, because I don't think it's only the judges in the system, whose opinions I respect but don't always agree with. I might add also, Senator Ellis, in some cases I think you may have a point. I think some of the judges did make coached points, but I'd point out that the California Coalition of Law Enforcement Association, the Los Angeles Police Protective League, the Association for Los Angeles Deputy Sheriffs, Police Research Association, California PORAC, California Council of Police and Sheriffs, Marshalls Association of California, Deputy Sheriffs Association of Sacramento County, the Santa Ana Police Benevolent Association, the Association of Orange County Deputy Sheriffs, the Anaheim Police Association, the Oakland Police Association, the Tulare County Sheriffs Association, San Diego County Sheriffs Association, among those that I have, are in opposition.

I tend to think that is a rather potent line of --

SENATOR CRAVEN: May I ask a question?

Mr. Chairman, I know you haven't had a chance to read through all of those.

CHAIRMAN ROBERTI: You're right.

SENATOR CRAVEN: But I wonder basically what their quarrel is? Is it that they have not received, you know, due process in their approach through the system?

You know, it would be interesting. I have the greatest regard for police, sheriffs, and people in law enforcement; however, they all work for someone else, namely a city council or a county board of supervisors in the main. And a lot of times that which they think they should have, you will find the people who are their employers disgree with completely.

So, if you had a list of those people, I think we'd have a tendency to counterbalance that which you may have read.

I don't want to harangue it too long. I know you've given it ample exposure, but I still feel that we should pass out Mr. Carmody with an aye vote.

CHAIRMAN ROBERTI: Well, once again, there is a motion before us.

We took testimony last week. That's why we are not asking for it from the audience.

The Secretary will call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello. Senator Petris.

SENATOR PETRIS: No.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: No.

The vote is two to two; the nomination is held in Committee.

(Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 11:45 P.M.)

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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of September, 1987.

EVELYN MIZAK
Shorthand Reporter